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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 412

MARI TOLLEFSEN TODOK AND KNUTE C. ENGEN, PETITIONERS,

vs.

UNION STATE BANK OF HARVARD, NEBRASKA, A CORPORATION; LEROY A. MEGRUE ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1929

CERTIORARI GRANTED OCTOBER 21, 1929

(34,543)

( )

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INDEX

	Original	Print
Proceedings in supreme court of Nebraska	1	1
Caption (omitted in printing)	1	
Record from district court of Hamilton County	2	1
Amended petition	2	1
Exhibit "A"—Warranty deed, Knudsen to Megrue	11	9
Exhibit "B"—Warranty deed, Knudsen to Brown	12	10
Exhibit "C"—Deed from Megrue to Bank of Harvard	13	11
Exhibit "D"—Warranty deed, Brown to Bank of Harvard	14	12
Exhibit "E"—Deed from Bank of Harvard to Megrue	15	13
Exhibit "E"—Mortgage, Theodore Griess to First Trust Co. of Lincoln	16	15
Exhibit "F"—Mortgage, Theodore Griess to First Trust Co. of Lincoln	19	16
Amendment to amended petition	22	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 16, 1929

	Original	Print
Answer to cross-petition of First Trust Co. of Lincoln	24	20
Exhibit "A"—Quitclaim deed	29	25
Answer of Bank of Harvard et al	30	25
Exhibit "A"—Quitclaim deed	33	28
Amended reply	34	29
Exhibit "A"—Agreement between Brown and Engen	35	30
Answer and cross-petition of M. T. Todok	37	31
Reply and answer to M. T. Todok	41	34
Answer of Bank of Harvard et al. to cross-petition of M. T. Todok	42	35
Answer of First Trust Co. of Lincoln to cross-petition of M. T. Todok	44	36
Reply of M. T. Todok to answer of First Trust Co. of Lincoln et al	46	38
Decree	49	40
Bill of exceptions	55	46
Testimony of Erick K. Engen	55	46
Mrs. Bertha McGrew	68	58
Mrs. Leroy A. McGrew	74	64
Leroy A. McGrew	76	64
Exhibit "A"—Letter from Knudsen to Thomas	81	68
Exhibit "C"—Deed, Knudsen to Megrue	82	69
Exhibit "D"—Deed, Engen to Brown	83	70
Exhibit—Treaty of amity and commerce between U. S. A. and Sweden	84	71
Argument and submission (omitted in printing)	86	
Judgment	87	73
Opinion, Eberly, J	90	74
Motion and brief for rehearing, Engen and Todok (omitted in printing)	99	
Order denying rehearing	100	80
Amended præcipe for transcript of record	101	81
Clerk's certificate (omitted in printing)	104	
Order allowing certiorari		83

[fol. 1] [Caption omitted]

[fol. 2]

IN DISTRICT COURT OF HAMILTON COUNTY

KNUTE C. ENGEN, Plaintiff,

vs.

UNION STATE BANK OF HARVARD, NEBRASKA, a Corporation; LeRoy A. Megrue, and Bertha M. Megrue, His Wife; Robert E. Brown and Anna S. Brown, His Wife, and H. G. Thomas, Administrator of the Estate of Christian Knudson, Deceased; Theodore Griess and First Trust Company of Lincoln, Nebraska, and Mari Tollefsen Todok, Defendants

AMENDED PETITION—Filed Oct. 1, 1925

The plaintiff for cause of action against the defendants alleges:

1. That he is the son and only lawful heir of Christian Knudson, who died intestate, a resident of Hamilton County, Nebraska, on August 6, 1923.

2. That at the time of his death and for a long time prior thereto and on July 17, 1923, said Christian Knudson was blind and was not able to read or write; that for a long period of time he had transacted business with the Union State Bank of Harvard, Nebraska, and had great confidence in said corporation and he implicitly trusted its officers and directors; that for a long period of time prior to his death, he transacted no business except on advice of said Union State Bank and its officers, directors and stockholders.

3. That the defendants LeRoy A. Megrue and Bertha M. Megrue, Robert E. Brown and Anna S. Brown were nephews and nieces of said Christian Knudson and they were on the 17th day of July, 1923, deeply indebted to the Union State Bank of Harvard, Nebraska, and were insolvent for the reason that their liabilities exceeded their

assets and the said Union State Bank of Harvard, Nebraska, had no means of securing from said Megrues and said Browns the amount due it on promissory notes.

4. That on or about July 17, 1923, the said Christian Knudson was blind and was ill with a serious malady which terminated his life about three weeks later; that said Union [fol. 3] State Bank and its officers, directors and stockholders and said defendants Megrue and Brown conspired to influence and compel said Christian Knudson to deed to the defendants Megrue eighty acres of land and to the defendants Brown eighty acres of land and thereafter the said Union State Bank and its officers, directors and stockholders, prior to the delivery of said deeds, did compel said Megrues and said Browns to deed said real estate to the said Union State Bank of Harvard, Nebraska, for the purpose of paying the debts of said defendants Megrue and said defendants Brown to said Union State Bank of Harvard, Nebraska, and pursuant to said conspiracy the officers, agents, directors and stockholders of said Union State Bank of Harvard, Nebraska, took possession of said Christian Knudson and by the exertion of undue influence and over-persuasion and without consideration induced said Christian Knudson to put his mark on certain instruments, one of which was a deed to LeRoy A. Megrue and Bertha M. Megrue, conveying the North Half of the South West Quarter of Section 35, Township 9, Section 7, West of the 6th P. M., in Hamilton County, Nebraska, and one of which was a warranty Deed conveying to the defendants Robert E. Brown and Anna S. Brown the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. Hamilton County, Nebraska; that said Christian Knudson, being at the time totally blind and there being no one present except the officers, agents, directors and stockholders of said Union State Bank of Harvard, Nebraska, which corporation was vitally and beneficially interested in the conveyance of said land to said defendants Megrue and Brown, said Knudson in his blind, helpless, incompetent condition and by reason of his confidence and trust in the officers of said Bank with which he had transacted business for a great number of years did not comprehend, realize and know the contents

of said instruments and did not knowingly and willingly and voluntarily make his said mark upon said instruments to thereby convey said real estate without consideration to said defendants Megrue and said defendants Brown, but said act was wholly and entirely the act of said Union State Bank of Harvard, Nebraska, and its officers, agent, directors and stockholders in pursuance of their conspiracy to transfer to the debtors of said Bank, the defendants Megrue and the defendants Brown, valuable real estate belonging to said Christian Knudson so that defendant Union State Bank of Harvard, Nebraska, might thereby and thereafter by influence and threats compel and induce said Megrues [fol. 4] and said Browns to deed said real estate to it, the defendant Union State Bank of Harvard, Nebraska, in payment of the indebtedness of said defendants Megrue and said defendants Brown to said Union State Bank, and was not the act of said Christian Knudson.

5. That at the time of his death three weeks later, the said Christian Knudson had in his possession and ownership the note of said LeRoy A. Megrue for $5000.00, which said note had been sold to said Knudson by the Union State Bank of Harvard, Nebraska, for full face value, although said note was of little or no value by reason of the insolvency of said LeRoy A. Megrue, and said asset is and was worthless to said estate.

6. That shortly after the defendant Union State Bank through its officers, agents, directors and stockholders had secured the conveyances heretofore described without consideration, they returned said Christian Knudson to his former home, but at no time informed the relatives and friends of said Christian Knudson of the alleged execution of said deeds and did not notify or inform said Browns or said Megrues of said deeds until long after the death of said Christian Knudson on August 8, 1923, that upon his return to his home the said Christian Knudson had no knowledge of the execution of said deeds, and said execution was without consideration and was false, fraudulent and void, and was brought about solely by reason of the blind, helpless condition of said Knudson and the undue influence exerted over him by the defendants.

7. That immediately after the death of said Christian Knudson the defendant Union State Bank of Harvard, Nebraska, in pursuance of its conspiracy to save itself from loss by reason of its extensive and extravagant loans to said defendants Megrue and said defendants Brown by transferring the above described real estate from said Christian Knudson to said Megrues and said Browns, notified said Megrues and said Browns that it held said deeds and endeavored to persuade said Megrues and said Browns to deed said real estate over to it, the Union State Bank of Harvard, Nebraska, in part payment of the indebtedness due to said Union State Bank from said defendants Megrue and said defendants Brown; that for a long time the said defendants Megrue refused to so deed said real estate and the said Union State Bank of Harvard, Nebraska, refused to deliver the deed held by it and purported to be signed by said Christian Knudson by mark conveying to said Megrues the North Half of the Southwest Quarter [fol. 5] of section 35, township 9, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, but on or about October 2, 1923, the defendants Megrue did accede to said demand and for a consideration of $9600.00 did execute and deliver a deed of said premises conveying same to said Union State Bank of Harvard, Nebraska, and did receive credit for $9600.00 on the indebtedness due said Union State Bank from said Megrues.

8. That the said Union State Bank in the same way approached the defendants Brown and did by persuasion secure from them a deed for the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, for the consideration of $8000.00 and did credit said defendants Brown with $8000.00 upon their indebtedness due to said Union State Bank.

9. That the Warranty Deed alleged to have been signed by said Christian Knudson by mark conveying to LeRoy A. Megrue and Bertha M. Megrue the North Half of the Southwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. was acknowledged before H. G. Thomas, as Notary Public, the Cashier and member of the board of directors and stockholders of the said Union State

Bank; that the witnesses to said deed and to the mark of said Christian Knudson were Ambrose C. Epperson and Theodore Griess, stockholders and directors of said Union State Bank. A true copy of said deed as taken from the records of Hamilton County, Nebraska, is attached hereto, as Exhibit "A", and made a part of this petition by special reference.

10. That the Warranty Deed alleged to have been signed by said Christian Knudson conveying to Robert E. Brown and Anna S. Brown the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. was acknowledged before H. G. Thomas as Notary Public, the Cashier and member of the Board of directors and stockholders of the said Union State Bank; that the witnesses to said deed and to the mark of said Christian Knudson were Ambrose C. Epperson and Theodore Griess, stockholders and directors of said Union State Bank. A true copy of said deed as taken from the records of Hamilton County, Nebraska, is attached hereto as Exhibit "B" and made a part of this petition by special reference; that the real estate attempted to be conveyed in said deeds was the homestead of said Christian Knudson and both the acknowledgment and deeds were utterly void because they were acknowledged before a Notary Public who was a stock-[fol. 6] holder of the Union State Bank, a corporation, and ben-ficiarlly interested in said deeds in that the said officers and stockholders of said bank obtained said deeds through fraud and undue influence in order that the defendants Megrue and defendants Brown could pay their debts to said bank with said real estate, and they were void because of the undue influence exerted by said Union State Bank and its officers and stockholders and obtained without consideration; that neither of said deeds was delivered.

11. That the deed from LeRoy A. Megrue and Bertha M. Megrue, husband and wife, to Union State Bank of Harvard, Nebraska, for the consideration of $9600.00 conveying the North Half of the Southwest Quarter of Section 35, township 9, Range 7, West of the 6th P. M. was acknowledged and witnessed by George A. Herzog, Notary Public, and a true copy of samd as taken from the records of

Hamilton County, Nebraska, is attached hereto and identified as Exhibit "C" and by special reference made a part of this petition.

12. The Warranty Deed signed, executed and delivered by Robert E. Brown and Anna S. Brown conveying to the Union State Bank of Harvard, Nebraska for a consideration of $8,000.00 the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, is dated September 15, 1923, and a true copy of the same as taken from the records of Hamilton County, Nebraska, is attached hereto and identified as Exhibit "D" and made a part hereof by special reference.

13. That all of said deeds identified as Exhibits A, B, C and D were filed for record in the office of the County Clerk of Hamilton County, Nebraska, by the Union State Bank of Harvard, Nebraska, on October 5, 1923, and on said date the Union State Bank of Harvard, Nebraska, did by deed convey to LeRoy A. Megrue by an instrument dated October 2, 1923, the Northeast Quarter and the Northeast Quarter of the Southeast Quarter of Section 34, Township 9, Range 7, West of the 6th P. M. in Hamilton Sounty, Nebraska, for the consideration of One Dollar ($1.00) a true copy of said deed is attached hereto and identified as Exhibit "E" and by special reference made a part of this petition.

14. That pursuant to said conspiracy the defendant Union State Bank of Harvard, Nebraska, did on September 5, 1924, by Warranty Deed grant unto Theodore Griess, the President and one of the principal stockholders of said Union State Bank, and one of the parties to said conspiracy, [fol. 7] the legal title by warranty deed to the above described real estate and said Griess did thereafter on September 22, 1924, mortgage the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. in Hamilton County to the First Trust Company of Lincoln, Nebraska, in the sum of $5000.00, and on same date he did mortgage the North Half of the Southwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. to the First Trust Company of Lincoln Nebraska, in the amount of $4500.00 and thereafter on September 26,

1924, the said Griess did reconvey said real estate so mortgaged to the Union State Bank of Harvard, Nebraska; that said defendant Theodore Griess is the President of said Union State Bank and a stockholder in same, and he was without right, title or authority to so encumber said land; that said mortgages are void and of no force and effect by reason of the failure of title in said Griess at the time he thus attempted to mortgage same; that said mortgage on the South Half of the Northwest Quarter of Section 35, is recorded in Book 78, page 270 of the mortgage records of Hamilton County, Nebraska, a copy of which is attached hereto as Exhibit "E" and made a part hereof and the mortgage on the North Half of the Southwest Quarter of said Section 35 is recorded in book 78, page 286 of the mortgage records of Hamilton County, Nebraska, a copy of which is attached hereto as Exhibit "F" and made a part hereof.

15. That the plaintiff is the only legal heir of said Christian Knudson, sometimes known as Christian Engen and is the present owner of the title in fee of the above described real estate, and is entitled to possession thereof with title in fee simple free from encumbrance.

16. That by reason of the unlawful conspiracy of defendants and the undue influence exerted by defendants over plaintiff's father in procurement of said deeds, plaintiff has been cheated and defrauded out of one hundred sixty acres of excellent farm land of the reasonable value of $24,000.00 and plaintiff has been damaged thereby in the sum of $24,000.00; that plaintiff is entitled to have all of said deeds set aside as null and void and without consideration and is entitled to have said mortgages cancelled and to have his own title quieted as to said real estate.

17. That the defendant Mari Tollefsen Todok claims some right in said real estate, claiming to be the widow of said Christian Knudson, deceased.

[fol. 8] Wherefore plaintiff prays that the court may set aside as void and hold for naught the alleged deed from Christian Knudson to LeRoy A. Megrue and Bertha M. Megrue dated July 17, 1923, conveying to said grantees the North Half of the Southwest Quarter of Section 35, Town-

ship 9, Range 7, West of the 6th P. M., also the alleged deed from Christian Engen to Robert E. Brown and Anna S. Brown, dated July 17, 1923, conveying to said defendants Brown the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, also the Warranty Deed from LeRoy A. Megrue and Bertha M. Megrue, husband and wife, to the Union State Bank of Harvard, Nebraska, conveying the North Half of the Southwest Quarter of Section 35, Township 9, Range 7, Hamilton County, Nebraska, dated October 2, 1923, and filed for record October 5, 1923, also the Warranty Deed from Robert E. Brown and Anna S. Brown, his wife, conveying to the Union State Bank of Harvard, Nebraska, the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, Hamilton County, Nebraska, dated September 17, 1923, and filed for record October 5, 1923, also the deed from Union State Bank to Theodore Griess dated September 5, 1924, conveying the South Half of the Northwest Quarter and the North Half of the Southwest Quarter of said Section 35, Township 9, Range 7, Hamilton County, Nebraska, also the mortgage deed of said Griess to the First Trust Company of Lincoln, Nebraska, dated September 22, 1924, encumbering the South Half of the Northwest Quarter of said Section 35, Township 9, Range 7, in the amount of $5,000.00, said mortgage being recorded in Book 78, page 270 of the mortgage records of Hamilton County, Nebraska, also the mortgage deed from said Theodore Griess to the First Trust Company of Lincoln, Nebraska, dated September 22, 1924, in the amount of $4,500.00 recorded in Book 78, page 286, of the mortgage records of Hamilton County, Nebraska, also the deed from said Theodore Griess to the Union State Bank dated September 26, 1924, conveying the South Half of the Northwest Quarter of said Section 35, Township 9, Range 7, Hamilton County, Nebraska, also the deed of said Theodore Griess to the Union State Bank dated September 26, 1924, conveying the North Half of the Southwest Quarter of said Section 35, Township 9, Range 7, Hamilton County, Nebraska, and that same be stricken from the records of the County Clerk of Hamilton County, Nebraska, and plaintiff further prays that the court by proper decree quiet in this [fol. 9] plaintiff his fee simple title in and to the above described real estate, to wit: The North Half of the Southwest

Quarter and the South Half of the Northwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, and in the event the court finds that the First Trust Company of Lincoln, Nebraska, is entitled to retain its lien on said real estate, then that plaintiff have judgment against the other defendants for the full amount of said mortgages, and that the court permanently enjoin the defendants and each of them from making any claim to any right, title, interest or possession in and to the said real estate and plaintiff prays for such other, further and different relief as may be just and equitable.

Hainer, Craft, Edgerton & Fraizer, Attorneys for Plaintiff.

[fol. 10] *Duly sworn to by F. E. Edgerton. Jurat omitted in printing.*

[fol. 11] EXHIBIT "A" TO AMENDED PETITION

Know all men by these presents that Christian Knudsen of the County of Clay and State of Nebraska for and in consideration of a valuable consideration, consisting of care, attention and compan-ship in hand paid, do hereby grant, bargain, sell, convey and confirm unto LeRoy A. Megrue and Bertha M. Megrue of the County of Hamilton and State of Nebraska, the following described real estate situated in Hamilton County and State of Nebraska, towit: The North Half of the Southwest Quarter (N. ½ S. W. ¼) of Section Thirty-five (35), Township Nine (9), Range Seven (7), West of the 6th P. M. The grantor hereby reserves the use of said land during his lifetime.

To have and to hold the premises above described, together with all the tenements, here*id*taments and appurtenances thereunto belonging; unto the said LeRoy A. Megrue and Bertha M. Megrue and to their heirs and assigns forever. And I do hereby covenant with the said grantees, and with their heirs and assigns that I am lawfully seized of said premises; that they are free from encumbrance; that I have good right and lawful authority to sell the same; and I do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said —— —— hereby relinquishes all — in and to the above described premises.

Signed this 17th day of July, A. D. 1923.

Christian (his x mark) Knudsen.

In presence of and witnesses to mark: Ambrose C. Epperson, Theo. Griess.

STATE OF NEBRASKA,
Clay County, ss:

On this 17th day of July, A. D. 1923, before me the undersigned, H. G. Thomas, a Notary Public, duly commissioned and qualified for and residing in said County, personally came Christian Knudsen to me known to be the identical person whose name is affixed to the foregoing instrument as grantor and acknowledged the same to be his voluntary act and deed.

Witness my hand and Notarial Seal the day and year last written above.

H. G. Thomas, Notary Public. Com. exp. July 28, 1925. (Notarial Seal.)

[fol. 12] EXHIBIT "B" TO AMENDED PETITION

Know all men by these presents that Christian Engen of the County of Hamilton and State of Nebraska, for and in consideration of a valuable consideration consisting of care, attention, and compan-ship in hand paid, do hereby grant, bargain, sell, convey and confirm unto Robert E. Brown and Anna S. Brown of the County of Clay and State of Nebraska, the following described real estate situated in Hamilton County and State of Nebraska, towit:

The South Half of the Northwest Quarter (S.½ N.W.¼) of Section Thirty-five (35), Township Nine (9), Range Seven (7), West of the 6th P. M. The grantor hereby reserves the use of said land during his lifetime.

To have and to hold the premises above described together with all the tenements, hereditaments and appurtenances thereunto belonging; unto the said Robert E. Brown and Anna S. Brown and to their heirs and assigns forever. And I do hereby covenant with the said grantees, and with

their heirs and assigns that I — lawfully seized of said premises; that they are free from encumbrance; that I have good right and lawful authority to sell the same; and I do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said —— —— hereby relinquishes all — in and to the above described premises.

Signed this 17th day of July, A. D. 1923.

Christian (his x mark) Engen.

In presence of and witnesses to mark: Ambrose C. Epperson, Theo. Griess.

STATE OF NEBRASKA,
Clay County, ss:

On this 17th day of July, A. D. 1923, before me the undersigned H. F. Thomas, a Notary Public, duly commissioned and qualified for and residing in said County, personally came Christian Engen to me known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and Notarial Seal the day and year last written above.

H. G. Thomas, Notary Public. Com. exp. July 28, 1925. (Notarial Seal.)

[fol. 13] EXHIBIT "C" TO AMENDED PETITION

Know all men by these presents that LeRoy A. Megrue and Bertha M. Megrue, husband and wife, of the County of Hamilton and State of Nebraska, for and in consideration of the sum of Ninety Six Hundred Dollars, in hand paid, do hereby grant, bargain, sell, convey and confirm unto Union State Bank of the County of Clay and State of Nebraska, the following described real estate *signated* in Hamilton County and State of Nebraska, towit, the North Half of the Southwest Quarter (N.½ S.W.¼) of Section Thirty-five (35), Township Nine (9), Range Seven (7), West of the 6th P. M.

(Int. Rev. $10.00 LAM 10-2-23.)

To have and to hold the premises above described, together with all the tenements, hereditaments and appurtenances thereunto belonging unto the said Union State Bank and to its heirs and assigns forever. And we do hereby covenant with the said grantee, and with its heirs and assigns that we lawfully seized of said premises; that they are free from encumbrance that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said Bertha M. Mergrue hereby relinquishes all marital rights in and to the above described premises.

Signed this 2d day of October, A. D. 1923.

LeRoy A. Megrue, Bertha M. Megrue.

In presence of Geo. A. Herzog.

STATE OF NEBRASKA,
Clay County, ss:

On this 2d day of October, A. D. 1923, before me the undersigned, George A. Herzog, a Notary Public, duly commissioned and qualified for and residing in said County, personally came LeRoy A. Megrue and Bertha M. Megrue, husband and wife, to me known to be the identical persons whose names are affixed to the foregoing instrument as grantors and acknowledged the same to be their voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

Geo. A. Herzog. My commission expires the 27th day of February, 1924. (Notarial Seal.)

[fol. 14] EXHIBIT "D" TO AMENDED PETITION

Know all men by these presents that Robert E. Brown and Anna S. Brown, husband and wife, of the County of Clay and State of Nebraska (for and in consideration of the sum of Eight Thousand Dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto Union State Bank of the County of Clay and State of Nebraska, the following described real estate situated in Hamilton County

and State of Nebraska, towit: The South Half of the Northwest Quarter (S.½ N.W.¼) of Section thirty-five (35), Township Nine (9), Range Seven (7), West of the 6th P. M.

(Int. Rev., $8.00, 9-17-23. REB.)

To have and to hold the premises above described, together with all the tenements, hereditaments and appurtenances thereunto belonging unto the said Union State Bank and to its heirs and assigns forever. And we do hereby covenant with the said grantee, and with its heirs and assigns that we lawfully seized of said premises; that they are free from encumbrance; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said Anna S. Brown hereby relinquishes all marital rights in and to the above described premises.

Signed this 17th day of September, A. D. 1923.

Robert E. Brown, Anna S. Brown.

In presence of Geo. A. Herzog.

STATE OF NEBRASKA,
Clay County, ss:

On this 17th day of September, A. D. 1923, before me the undersigned, George A. Herzog, a Notary Public, duly commissioned and qualified for and residing in said County, personally came Robert E. Brown and Anna S. Brown, husband and wife, to me known to be the identical persons whose names are affixed to the foregoing instrument as grantors, and acknowledged the same to be their voluntary act and deed.

Witness my hand and Notarial Seal the day and year last written above.

Geo. A. Herzog, Notary Public. My commission expires the 27th day of February, 1924. (Notarial Seal.)

[fol. 15] EXHIBIT "E" TO AMENDED PETITION

Know all men by these presents that the Union State Bank of the County of Clay and State of Nebraska for and

in consideration of the sum of One Dollar, in hand paid do hereby grant, bargain, sell, convey and confirm unto LeRoy A. Megrue of the County of Hamilton and State of Nebraska the following described real estate situated in Hamilton County and State of Nebraska, towit: The Northeast Quarter of Section Thirty four (34), Township Nine (9), Range Seven (7), and the Northeast Quarter (N.E.¼) of the Southeast Quarter (S.E.¼) of Section Thirty four (34) township Nine (9) Range Seven (7), West of the 6th P. M.

Int. Rev., $1.00, 10-2-23. USB.)

To have and to hold the premises above described, together with all the tenements, hereditaments and appurtenances thereunto belonging unto the said LeRoy A. Megrue and to his heirs and assigns forever. And we do hereby covenant with the said grantee, and with his heirs and assigns that we lawfully seized of said premises; that they are free from encumbrance created by the grantor; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said —— —— hereby relinqishes all — in and to the above described premises.

Signed this 2d day of October, A. D. 1923.

Union State Bank, by Theo. Griess, President.

In presence of Geo. A. Herzog.

STATE OF NEBRASKA,
Clay County, ss:

On this 2d day of October, A. D. 1923, before me the undersigned George A. Herzog, a Notary Public, duly commissioned and qualified for and resiging in said County, personally came Theo. Griess, President of the Union State Bank to me known to be the identical person whose name is affixed to the foregoing instrument as grantor and acknowledged the same to be his voluntary act and deed.

Witness my hand and Notarial Seal the day and year last written above.

Geo. A. Herzog, Notary Public. My commission expires the 27th day of February 1924. (Notarial Seal.)

[fol. 16] EXHIBIT "E" TO AMENDED PETITION

By this instrument Theodore Griess, a widower, of the County of Clay and State of Nebraska, hereinafter called party of the first part, for the sum of Five thousand and no/100 Dollars, convey- unto The First Trust Company of Lincoln, Nebraska, and its successors and asigns, the following real estate with all the appurtenances thereunto belonging, situated in Hamilton County, State of Nebraska, to-wit: The south half of the Northwest quarter S. ½ N. W. ¼ of Section thirty-five, Sec. 35, Township Nine North, Twp. 9 N., Range Seven West, Rge. 7 W., of the Sixth Principal Meridian, 6th P. M., containing eighty acres, 80 A., more or less, according to Government Survey and warrants the title thereto perfect and clear except this mortgage.

During the time this mortgage is in force the mortgagor agrees:

First. To pay all taxes and special assessments levied against said premises, including all taxes and assessments levied upon this mortgage, or the debt secured by this mortgage.

Second. To keep all buildings thereon insured against loss by fire and tornado in some company, to be chosen by the said The First Trust Company of Lincoln, Nebraska, in the sum of $—, for the benefit of the said Trust Company, and its successors or assigns; and to deposit said policies with said Trust Company.

Third. To pay or cause to be paid to the said The First Trust Company of Lincoln, Nebraska, its successors or assigns the sum of Five thousand and no/100 Dollars on the first day of October, 1929, with interest thereon at the [fol. 17] rate of five & one-half per cent per annum, payable semi-annually, according to the tenor and effect of the one certain first mortgage bond of said Theodore Griess with interest coupons attached bearing even date with these presents. After maturity said bond draws interest at the rate of ten per cent per annum; likewise each coupon after its maturity.

If said taxes and assessments are not paid when due, or if the buildings on said premises are not insured as above provided, or if any of said interest is not paid when due, then said whole debt shall become due immediately, at the

option of the Trust Company, and shall thereafter draw interest at the rate of ten per cent per annum.

Whether said debt becomes due by lapse of time, or by reason of the failure of the party of the first party to comply with any condition herein, the said The First Trust Company of Lincoln, Nebraska, its successors and assigns, shall have the right to begin the foreclosure of this mortgage at once on the whole debt hereby secured, and to include therein all taxes, assessments, and insurance premiums paid by it or them.

After the commencement of any suit in foreclosure the plaintiff therein shall be entitled to the possession of said premises and the appointment of a receiver therefor notwithstanding they may be the homestead of the occupant.

Signed this 22nd day of September A. D. 1924

Theodore Griess.

In the presence of Elsie Korgan.

STATE OF NEBRASKA,
County of Clay, ss:

On this 24th day of September, 1924, before me the un- [fol. 18] dersigned, a notary public in and for said county, personally came Theodore Griess, a widower, to me known to be the identical person described in and whose name is signed to the above deed as grantor and acknowledged said instrument to his voluntary act and deed.

Witness my hand and notarial seal.

Elsie Korgan, Notary Public. My commission expires on the 21st day of March, 1927. (Notarial Seal.)

[fol. 19] EXHIBIT "F" TO AMENDED PETITION

By this instrument Theodore Griess, a widower, of the County of Clay and State of Nebraska, hereinafter called party of the first part, for the sum of Forty five hundred and no/100 Dollars, convey- unto The First Trust Company of Lincoln, Nebraska, and its successors and assigns, the following real estate with all the appurtenances thereunto belonging; situated in Hamilton County, State of Nebraska, to-wit: The north half of the southwest quarter N. ½ S. W.

¼ of section thirty five, Sec. 35, Township nine north, Twp. 9 N., Range seven West, Rge. 7 W., of the Sixth Principal Meridian, 6th P. M., containing eighty acres 80 A. more or less, according to government survey and warrants the title thereto perfect and clear except this mortgage.

During the time this mortgage is in force the mortgagor agrees:

First. To pay all taxes and special assessments levied against said premises, including all taxes and assessments levied upon this mortgage, or the debt secured by this mortgage.

Second. To keep all buildings thereon insured against loss by fire and tornado in some company, to be chosen by the said The First Trust Company of Lincoln, Nebraska, in the sum of $—, for the benefit of the said Trust Company, and its successors or assigns; and to deposit said policies with said Trust Company.

Third. To pay or cause to be paid to the said The First Trust Company of Lincoln, Nebraska, its successors or assigns the sum of Forty five hundred and no/100 Dollars on the first day of October, 1929, with interest thereon at the rate of five & one half per cent per annum, payable semi-annually, according to the tenor and effect of the one [fol. 20] certain first mortgage bond of said Theodore Griess with interest coupons attached, bearing even date with these presents. After maturity said bond draws interest at the rate of ten per cent per annum; likewise each coupon after its maturity.

If said taxes and assessments are not paid when due, or if the buildings on said premises are not insured as above provided, or if any of said interest is not paid when due, then said whole debt shall become due immediately, at the option of the Trust Company, and shall thereafter draw interest at the rate of ten per cent per annum.

Whether said debt becomes due by lapse of time, or by reason of the failure of the party of the first part to comply with any condition herein, the said The First Trust Company of Lincoln, Nebraska, its successors and assigns, shall have the right to begin the foreclosure of this mortgage at once on the whole debt hereby secured, and to include

therein all taxes, assessments, and insurance premiums paid by it or them.

After the commencement of any suit in foreclosure the plaintiff therein shall be entitled to the possession of said premises and the appointment of a receiver therefor notwithstanding they may be the homestead of the occupant.

Signed this 22nd day of September, A. D. 1924.

Theodor Griess.

In the presence of Elsie Korgan.

[fol. 21] State of Nebraska,
County of Clay, ss:

On this 24th day of September, 1924, before me the undersigned, a notary public in and for said county, personally came Theodor Griess, a widower, to me known to be the identical person described in and whose name is signed to the above deed as grantor and acknowledged said instrument to be his voluntary act and deed.

Witness my hand and notarial seal.

Elsie Korgan, Notary Public. My commission expires on the 21st day of March, 1927. (Notarial Seal.)

[File endorsement omitted.]

[fol. 22] In District Court of Hamilton County

[Title omitted]

Amendment to Amended Petition—Filed Dec. 12, 1925

The plaintiff herewith files this amendment to his amended petition, the same to be paragraphs 18, 19 and 20 of said petition and to be inserted just before the prayer.

18. That through a long period of time Theodore Griess, defendant herein, has been an agent of the First Trust Company of Lincoln, Nebraska, in Clay County, Nebraska, and has made numerous loans for said First Trust Company of Lincoln, Nebraska, as its agent and the defendant Theodore Griess having full knowledge of all the facts and

circumstances set out in the amended petition and having full knowledge that said deeds by said Christian Knudson to said McGrew and said Brown were given without consideration and by reason of the undue influence and overpersuasion exerted upon said Knudson, the said First Trust Company of Lincoln, Nebraska, was charged with knowledge of the same facts at the time it made its loans against said real estate.

19. That on November 20, 1923, at 8:10 A. M. there was entered for record in the numerical index and in Book 8 of the Miscellaneous records of Hamilton County, Nebraska, on page 28 by the County Clerk of said County a certain sworn affidavit executed by A. L. Undeland, Attorney in Fact for the defendant Mari Tollofson Todak, alleging that she was and is the widow of the late Christian Knudson, sometimes known as Christian Engen, and that she claimed an interest in the South Half of the Northwest Quarter and North Half of the Southwest Quarter of Section 35, Township 9, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, and that said real estate was the homestead of the deceased and occupied as such up to the time of his death and that the deeds described in plaintiff's amended petition were executed by the deceased as [fol. 23] described therein on the 17th day of July, 1923, and that they were without the knowledge, consent or authority of said widow of said deceased, and therefore under the law of Nebraska utterly void; that the mortgages herein described to the First Trust Company of Lincoln, Nebraska, as grantees were not executed nor filed until September 22, 1924, and the said First Trust Company was at the time it made said loans and accepted said mortgages fully advised as to the facts set out in Plaintiff's amended petition and said First Trust Company conspired with and assisted the other defendants in attempting to cheat and defraud this plaintiff as described in said amended petition.

20. That plaintiff has no plain adequate remedy at law.
Hainer, Craft, Edgerton & Fraizer, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 24] In District Court of Hamilton County

[Title omitted]

Answer and Cross-Petition of First C S. of Lincoln—Filed Mar. 20, 1926

I

Comes now the defendant, the First Trust Company of Lincoln, Nebraska, and for answer to the amended petition of plaintiff herein, while still objecting that the amended petition does not contain allegations sufficient to constitute a cause of action against this defendant and that the same does not disclose any title or right on the part of the plaintiff to maintain this action, admits, alleges and denies as follows:

1. Admits the execution and delivery and recording of the deeds copies of which were attached to said petition, and admits execution and delivery and recording of the deeds and mortages described in paragraph 14 of said petition, but defendant expressly denies the allegations regarding the manner or method or means used in the execution of the deeds or the inducements therefor as alleged in said amended petition.

2. Defendant admits that Leroy A. Megrue and Bertha M. Megrue are husband and wife; that Robert E. Brown and Anna S. Brown are husband and wife and that said Bertha M. Megrue and Anna S. Brown were nieces of Christian Knudson; admit that Christian Knudson was sometimes known as Christian Engen and that he departed this life in the month of August, 1923, intestate; admit that the defendant H. G. Thomas is the administrator of the estate of said Christian Knudson, otherwise known as Christian Engen and that said estate is now pending probate in the County Court of Hamilton County, Nebraska, that being the court having original and ex*lucisv*e jurisdiction of all matters in said estate relative to the determination of heirship, the descent and distribution of the property and estate of said Christian Knudson, deceased.

[fol. 25] 3. The defendant alleges that the plaintiff was fully informed and well acquainted with the facts, circum-

stances and transactions had by and between the said Christian Knudson or Christian Engen with the said defendants and with each and all the details regarding the conveyances, deeds and mortages relative to the real estate mentioned in said amended petition, and with full knowledge and information the said plaintiff Knute C. Engen thereafter confirmed the same by making, acknowledging and delivering to the defendants Brown and Megrue a quit claim deed to said premises thereby conveying to said Brown and Megrue and to the grantees and assignees thereof, all his right, title and interest in and to said land described in said deed, which deed was filed for record in the office of the County Clerk of Hamilton County, Nebraska, and recorded in Book 31 of Deeds at page 491 of the Deed Records of Hamilton County, Nebraska, on March 12, 1926. That at the time of the filing of this action plaintiff did not own or hold any right, title or interest in or to said premises; that a copy of said quit claim deed hereto attached, marked Exhibit "A", is made a part of this answer.

4. Defendant denies each and every allegation of said petition not herein expressly admitted or denied.

5. Defendant specifically denies the allegations of paragraph 18 and alleges that Theodore Griess was never the agent of the defendant and that in regard to the mortgages referred to in the cross-petition of this defendant, said Theodore Griess was not acting as agent of defendant but on his own behalf.

6. Defendant admits that the affidavit referred to in paragraph 19 was filed as therein alleged and denies the remainder of said paragraph; alleges that at the time said mortgages were made abstract of title, duly certified to date by a bonded abstractor, were furnished to the examining attorney for defendant and showed a merchantable fee title in the mortgagor and that defendant had no knowledge of any alleged defect in said title and acted in good faith in the making of said mortgage.

II

For further answer to said amended petition and by way of cross-petition against its co-defendants and against the plaintiff, defendant alleges:

1. That this defendant is and at all times herein men- [fol. 26] tioned was a corporation organized and existing under the laws of the State of Nebraska.

2. That on or about September 22, 1924, for value received, said Theodore Griess executed and delivered his promissory note, by the terms of which, he promised to pay to the order of this defendant, on October 1, 1929 the sum of $5000, with interest at 5½% per annum, payable semi-annually.

That a copy of said note is hereto attached, marked Exhibit "B" and made a part of this answer and cross-petition.

3. That as a part of the same transaction and to secure the payment of said note, said Theodore Griess on September 22, 1924, executed and delivered his mortgage deed conveying to this defendant, the South Half of Northwest Quarter (S. ½ N. W. ¼) of Section 35, Township 9, Range 7, Hamilton County, Nebraska, which mortgage was on September 25, 1925, recorded in the office of register of deeds of Hamilton County, Nebraska, and now appears of record in Book 78 at page 270.

That no part of said note and mortgage has been paid except interest due prior to October 1, 1925.

4. That at the time said mortgage was made an abstract of title duly certified to date by a bonded abstractor, was furnished to the examining attorney for this defendant and showed a merchantable fee title in the mortgagor, and defendant had no knowledge of any alleged defect in the title and paid over to the defendant Theodore Griess, on or about September 26, 1924 the sum of $5000.00 in reliance on said title and the possession of said land in said Theodore Griess. That said defendant paid out said money, as aforesaid, in reliance upon said mortage being a first lien and without any notice or knowledge of any claim that plaintiff is now making or that plaintiff had any claim to any portion of said premises; that the first notice or knowledge this defendant had of plaintiff's claim was received on reading the petition at the commencement of this action. That shortly after the recording of said mortgage and months prior to the commencement of this action, this defendant in good faith, sold, endorsed and delivered the

notes secured by said mortgage and said mortgage, to purchasers, who now hold the same and who have had no notice or knowledge of any claim right, title or interest in the plaintiff.

[fol. 27] 5. That the claim of the plaintiff and the right, title and interest of all of the defendants herein is subject and inferior to the first lien of this defendant.

Wherefore defendant prays that the mortgage recorded in Book 78 at page 270 be adjudged and declared to be a first lien upon the South Half of Northwest Quarter (S. ½ N. W. ¼) of said Section 35, Township 9, Range 7, Hamilton County, Nebraska, and that the claim of the plaintiff and of all of said defendants be adjudged and declared to be subject and inferior to said lien and that the defendant have and recover its costs herein.

III

For further answer and by way of cross-petition against its co-defendants and the plaintiff, defendant alleges:

1. That it is and at all times herein mentioned, was a corporation organized and existing under the laws of the State of Nebraska.

2. That on or about September 22, 1924, for value received, said Theodore Griess, executed and delivered his promissory note, by the terms of which, he promised to pay to the order of this defendant, on October 1, 1929, the sum of $4,500 with interest at 5½% per annum, payable semi-annually.

That Exhibit "C" hereto attached is a true copy of said note except as to amount and description of property.

3. That as a part of the same transaction and to secure the payment of said note, said Theodore Griess on September 22, 1924, executed and delivered his mortgage deed conveying to this defendant, the North Half of Southwest Quarter (N. ½ S. W. ¼) of Section 35, Township 9, Range 7, Hamilton County, Nebraska, which mortgage was on September 25, 1924, recorded in the office of the register of deeds of Hamilton County, Nebraska, and now appears of record in book 78 at page 286.

That no part of said note and mortgage has been paid except interest due prior to October 1, 1925.

4. That at the time said mortgage was made an abstract of title, duly certified to date by a bonded abstractor, was furnished to the examining attorney for this defendant and showed a merchantable fee title in the mortgagor, and defendant had no knowledge of any alleged defect in the title and paid over to the defendant Theodore Griess, on [fol. 28] or about September 26, 1924, the sum of $5,000 in reliance on said title and the possession of said land in said Theodore Griess. That said defendant paid out said money, as aforesaid, in reliance upon said mortgage being a first lien and without any notice or knowledge of any claim that plaintiff is now making or that plaintiff had any claim to any portion of said premises; that the first notice or knowledge this defendant had of plaintiff's claim was received on reading the petition at the commencement of this action. That shortly after the recording of said mortgage and months prior to the commencement of this action, this defendant in good faith, sold, endorsed and transferred the notes secured by said mortgage and said mortgage, to purchasers, who now hold the same and who have and had no notice or knowledge of any claim right, title or interest in the plaintiff.

6. That the claim of the plaintiff and the right, title and interest of all of the defendants herein is subject and inferior to the first lien of this defendant.

Wherefore defendant prays that the mortgage recorded in Book 78 at page 286, be adjudged and declared to be a first lien upon the North Half of the Southwest Quarter (N. ½ S. W. ¼) of said Section 35, Township 9, Range 7, Hamilton County, Nebraska, and that the claim of the plaintiff and of all of said defendants be adjudged and declared to be subject and inferior to said lien and that the defendant have and recover its costs herein.

The First Trust Company of Lincoln, Nebraska, Defendant and Cross-petitioner. Hall, Cline & Williams, Attorneys.

Duly sworn to by F. D. Williams. Jurat omitted in printing.

[fol. 29] EXHIBIT "A" TO ANSWER AND CROSS-PETITION

The grantor, Knute C. Engen, for the consideration of One Dollar and other valuable considerations, — Dollars, convey- and quitclaim- to Robert E. Brown and Anna S. Brown and L. A. Megrue and Bertha Megrue all interest in the following described real estate: The S. ½ N. W. ¼ and the N. ½ S. W. ¼ of Section Thirty-five (35), Township Nine (9), Range Seven (7), West of the Sixth P. M., Hamilton County, Nebraska, situate in the County of Hamilton, State of Nebraska.

Dated this 12th day of January, 1924.

(Signed) Knute C. Engen.

Witnesses: Thrond P. Bugge, Andrew Mae.

STATE OF WASHINGTON,
County of King, ss:

I, Thrond P. Bugge, a Notary Public, do hereby certify that on this 12th day of January, 1924, personally appeared before me Knote C. Engen to me known to be the individual described in, and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 12th day of January, A. D. 1924.

Thrond P. Bugge, Notary Public in and for the State of Washington, residing in Seattle. (Seal.)

(Filed March 12, 1926, in Volume 31, page 491, of Records of Hamilton County, Nebraska.)

[File endorsement omitted.]

[fol. 30] IN DISTRICT COURT OF HAMILTON COUNTY

[Title omitted]

ANSWER OF BANK OF HARVARD ET AL.—Filed Mar. 5, 1926

Come now the defendants, Union State Bank of Harvard, Nebraska, a corporation, LeRoy Megrue, Bertha M. Megrue,

Robert E. Brown, Anna S. Brown, H. G. Thomas, Administrator of the estate of Christian Knudsen deceased, Theodore Griess and for their several answers herein, (while still objecting that the amended petition herein does not contain allegations sufficient to constitute a cause of action against these answering defendants, or any of them and that same does not disclose any title or right on the part of the plaintiff to maintain this action in this Court,) allege as follows, towit:

1. Admit that LeRoy A. Megrue and Bertha M. Megrue are husband and wife; that Robert E. Brown and Anna S. Brown are husband and wife, and that said Bertha M. Megrue and Anna S. Brown were nieces of Christian Knudson; admit that Christian Knudson was sometimes known as Christian Engen and that he departed this life in the month of August, 1923, intestate; admit that the defendant H. G. Thomas is the administrator of the estate of said Christian Knudson, otherwise known as Christian Engen and that said estate is now pending probate in the County Court of Hamilton County, Nebraska, that being the court having original and exclusive jurisdiction of all matters in said estate relative to the determination of heirship, the descent and distribution of the property and estate of said Christian Knudson, deceased.

2. These defendants admit the execution, delivery and recording of the various deeds, mortgages and conveyances [fol. 31] that are referred to in the amended, amended petition of the plaintiff, and admit the execution and delivery and recording of the deeds and mortgages described in paragraph 14 of said petition, but the defendants expressly deny the allegations regarding the manner or method or means used in the execution of the deeds or the inducements therefore as alleged in said amended, amended petition, and allege the facts to be that each and all of said deeds, mortgages and conveyances were made in due course for valuable consideration and in good faith.

3. Further answering these defendants deny each and every allegation contained in said amended, amended petition not herein expressly admitted.

4. These defendants allege that the plaintiff was fully informed and well acquainted with the facts, circumstances and transactions had by and between these answering defendants and said Christian Knudson or Christian Engen, and with each, and other details as to conveyances, deeds, mortgages and conveyances relative to the real estate mentioned and described in his petition, and that with full knowledge and information the said plaintiff, Knute C. Engen, afterward, approved, ratified and confirmed the same by making, acknowledging and delivering to the defendants Brown and Megrue a good and sufficient quit claim deed to said premises and thereby conveyed to said Browns and Megrues and to their grantees and assignees all his right, title and interest in and to each and every part, parcel and tract of the lands described in his amended, amended petition on or about January 12, 1924, which said deed was filed for record in the office of the County Clerk of Hamilton County, Neb. and recorded in Book 31 of deeds at page 491 of the Deed Records of Hamilton County, Nebraska, on March 12th, 1926. That at the time of the filing of this Action the plaintiff, Knute C. Engen, did not own or hold any right, title, interest or share in and to said premises, but had parted with all his right and claim thereto, if any he ever had. A copy of said Deed of Quit Claim is hereto attached marked Exhibit "A" and made a part of this Answer as fully as though the same were extended and set forth at length herein. These defendants allege that by reason of the premises and by reason of the execution and delivery of said Quit Claim Deed, the plaintiff Knute C. Engen became and is now estopped to question the validity of the title of the defendants or any of them and that he is further estopped thereby from claiming or asserting any [fol. 32] right, title or interest in and to said premises or any part thereof.

Wherefore these answering defendants pray that the plaintiff take nothing by his amended *amended* petition herein filed and that same be dismissed at the cost of the plaintiff and that the title, possession and dominion of the defendant, the Union State Bank of Harvard, Nebraska, a corporation, be quieted, confirmed and approved as the same now appears of record and subject only to the lawful mort-

gages, liens and incumbrances existing thereon, as the various rights, interests and liens of these defendants may appear and that the plaintiff be forever enjoined from molesting, disturbing or interfering with the defendants in the quiet enjoyment and peaceable possession of said premises and each and every part thereof; that the defendants recover their costs herein expended and for such other, further or different relief as may be just and equitable in the premises.

Dated this 25th day of March, 1926.

J. H. Grosvenor, Atty. for Above Answering Defendants.

Duly sworn to by J. H. Grosvenor. Jurat omitted in printing.

[fol. 33] EXHIBIT "A" TO ANSWER

The grantor, Knute C. Engen, for the consideration of One Dollar and other valuable considerations *Dollars*, convey- and quitclaim- to Robert E. Brown and Anna S. Brown and L. A. Megrue and Bertha Megrue all interest in the following described real estate: The S.½ N. W.¼ and the N. ½ S. W. ¼ of Section Thirty-five (35), Township Nine (9), Range Seven (7), West of the Sixth P. M., Hamilton County, Nebraska, situate in the County of Hamilton, State of Nebraska.

Dated this 12th day of January, 1924.

(Signed) Knute C. Engen.

Witnesses: Thrond P. Bugge, Andrew Mae.

STATE OF WASHINGTON,
County of King, ss:

I, Thrond P. Bugge, a Notary Public, do hereby certify that on this 12th day of January, 1924, personally appeared before me Knute C. Engen, to me known to be the individual described in, and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 12th day of January, A. D. 1924.

Thrond P. Bugge, Notary Public in and for the State of Washington, residing at Seattle. (Seal.)

(Filed March 12, 1926, in Volume 31, page 491, of Records of Hamilton County, Nebraska.)

[fol. 34] In District Court of Hamilton County

[Title omitted]

Amended Reply—Filed May 3, 1926

Comes now the plaintiff and for his amended reply to the several answers of defendants denies each and every material allegation therein contained, save and except those specifically admitted in plaintiff's petition.

Further replying, this plaintiff alleges that on the 12th day of January, 1924, the defendant H. G. Thomas and the defendant Robert E. Brown came to Seattle, Washington, and endeavored to secure the signature of this plaintiff to a contract and agreement, a copy of which is attached hereto and identified as Exhibit "A" and made a part of this reply, and the defendant H. G. Thomas as Administrator of the estate of Christian Knudson declared that he had some funds of said estate in his possession which would be turned over to this plaintiff if he would sign this contract, but that if plaintiff did not sign said contract, Exhibit "A," then the said H. G. Thomas as Administrator of said estate would keep this plaintiff from said funds, which were legally his, as long as the law would let him; that plaintiff finally agreed to sign said contract and thereupon the defendants Brown and Thomas falsely, fraudulently, deceitfully and dishonestly did substitute in place of said contract, Exhibit "A," for this plaintiff's signature, and without the knowledge of this plaintiff, a certain quit claim deed of plaintiff's title and interest in and to the South Half of the Northwest Quarter and the North Half of the Southwest Quarter of Section 35, Township 9, North, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, and

did by this fraud, deception and trickery deceive this plaintiff into signing and executing said quit claim deed; that plaintiff signed said quit claim deed without consideration and fully believed that he was signing the contract, a copy of which is shown herein as Exhibit "A," and plaintiff did not discover said deceit, fraud and trick on the part of said defendants Brown and Thomas until they procured the recording of said deed on the 12th day of March, 1926; that after plaintiff had signed an instrument, which plaintiff supposed was the contract shown herein as Exhibit "A," [fol. 35] on the 12th day of January, 1924, plaintiff demanded from said H. G. Thomas and received from him a copy of said contract, which plaintiff supposed he had signed, and the copy so delivered to said plaintiff by H. G. Thomas is the same as Exhibit "A" herein.

That this plaintiff at no time confirmed the making, acknowledging and delivering of the original deeds to the defendants Brown and Megrue and said quit claim deed as placed for record by the defendants is a fraud and a cheat and utterly void and of no force and effect by reason of said fraud.

Wherefore Plaintiff renews the prayer of his amended petition and in addition thereto prays that the court shall hold as null and void the quit claim deed recorded by the defendants on March 12, 1926, and found in Volumns 31, page 491, of the records of Hamilton County, Nebraska, for the reasons set out in this reply.

Craft, Edgerton & Fraizer, Attorneys for Plaintiff.

Duly sworn to by Knute C. Engen. Jurat omitted in printing.

EXHIBIT "A" TO AMENDED REPLY

This agreement, made and entered into this 12th day of January, A. D. one thousand nine hundred and twenty-four, by and between R. E. Brown, the party of the first part, and Knute C. Engen, the party of the second part,

Witnesseth: That the party of the first part in consideration of the covenants and agreements hereinafter made by the party of the second part hereby covenant that the party of the first part will pay the party of the second part the

sum of Four Thousand ($4,000.00) when the S. ½ N. W. ¼ [fol. 36] 35-9-7 is sold for $12,000, or when party of the first part is able to sell his Hamilton County Nebraska land at a price sufficient in excess of the mortgage now against it to bring enough to make settlement as stated.

In Witness Whereof the said parties have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in presence of Thrond P. Bugge, Andrew Moe.

R. E. Brown, Knute C. Engen.

[File endorsement omitted.]

[fol. 37] In District Court of Hamilton County

[Title omitted]

Answer and Cross-petition of M. F. Todok—Filed May 3, 1926

Comes now the defendant Mari Tollefsen Todok, and for her answer to the amended petition of the plaintiff herein admits Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 17, thereof, and admits that by reason of the unlawful conspiracy and the undue influence exerted by LeRoy A. Megrue, Bertha M. Megrue, his wife, Robert E. Brown and Anna S. Brown, his wife, H. G. Thomas, Theodore Griess, defendants herein, over said Christian Knudson, Deceased, plaintiff has been cheated and defrauded out of the one-half undivided interest in the lands described in plaintiff's petition of the value of $24,000.00, but this defendant specifically denies that the plaintiff is the sole and only heir of said Christian Knudson, deceased, and this defendant denies each and every other allegation contained in the plaintiff's amended petition, except such as are hereinafter or hereinbefore expressly admitted, qualified or explained; and this defendant denies each and every allegation contained in the answer and cross-petition of the defendant First Trust Company of Lincoln, Nebraska, and in the answer of the Union State Bank of Harvard, Nebraska, LeRoy A. Megrue, Bertha M. Megrue, Robert E. Brown, Anna S. Brown, H. G. Thomas, Administrator, and Theo-

dore Griess, except such allegations as admit the truth of this defendant's answer and cross-petition, and except such allegations as are hereinbefore or hereinafter expressly admitted to be true, qualified or explained.

Cross-petition

1. This defendant alleges that she and Christian Knudson, deceased, were married in Norway on December 7, 1867, and that the plaintiff herein is the son of this answering de- [fol. 38] fendant and said Knudson, and that the said deceased, Christen Knudsen, or Christian Knudsen, or Christian Knudson, or Christen Engen, or Christen Knudsen Engen, is the same party referred to in plaintiff's amended petition as Christian Knudson, now deceased. This defendant further alleges that her husband died intestate at Hamilton County, Nebraska, on August 6, 1923, which place has been the legal residence of this answering defendant, and that the land described in the plaintiff's amended petition has been for many years, and was at the time of the death of this defendant's husband, the homestead of said Deceased and his wife.

2. This answering defendant further alleges that by an order of the County Court of Hamilton County, Nebraska, the only property found in the name of the said Deceased following his death has been distributed, or the greater part thereof, equally between the Deceased's son and this defendant, the widow of said Deceased.

3. Defendant further alleges that all of the deeds and mortgages mentioned in the plaintiff's amended petition were executed and delivered with full, actual and constructive knowledge by each and all of the parties thereto that this answering defendant had an interest in said real estate as the wife of said deceased, and with full knowledge that said real estate was the homestead of deceased and this defendant at all times during the last ten years and more of the lifetime of said Deceased.

4. Defendant further alleges that at the time said Deceased was induced to execute and deliver said deeds the value of said real estate was the sum of $24,000.00, and that the said Union State Bank of Harvard, through its

officers, caused said deeds to be executed and delivered by said deceased for their benefit, and the benefit received by the said bank and its officers as the result of the alleged conspiracy was the sum of $9,600 and $8,000.00, as stated in paragraphs 7 and 8 of the plaintiff's amended petition, or a total of $17,600.00, which sum of money, in truth and in fact, upon the death of said deceased, became due and payable to H. G. Thomas, Administrator of the Estate of said Deceased, and should have been paid by said defendant Bank and its officers to said Administrator instead of being retained by the defendant bank and its officers as the result of crediting the worthless notes of the said Brown and Megrue with said amount. This defendant further alleges [fol. 39] that the deceased never intended to and had no knowledge of executing the deeds in question to the said defendants Brown and Megrue, and that if not for the benefit which the defendant Bank and its said officers expected to receive and did receive as a result of the execution of said deeds, the deeds would never have been made or executed.

5. The defendant further alleges that when the said defendant H. G. Thomas was appointed administrator of the estate of said Deceased, it was part of his duty as such administrator to collect and receive for said estate the actual consideration which the defendant bank paid for the title to said real estate, which was the sum of $17,600.00, and that by the failure of said administrator to collect said sum of money this defendant has been damaged in the sum of one-half of said amount, or the sum of $8,800.00, which sum she would have received had it been collected by said administrator.

Wherefore Mari Tollefsen Todok, this answering defendant, prays that the deeds alleged to have been made by Christian Knudsen on July 17, 1923, and all deed, mortgages & conveyances issued since said date envolving the real estate in question in this law suit be cancelled & set aside or that this defendant decreed to be the owner of a ½ undivided interest therein that all of said deeds & mtgs. involving same since July 16, 1923, be cancelled, or have judgment against the Union State Bank or Harvard, Nebraska, Leroy A. Megrue, Bertha M. Megrue, his wife,

Robert E. Brown, and Anna S. Brown, his wife, and H. G. Thomas, personally and H. G. Thomas, Administrator of the estate of Christian Knudsen, deceased, Theodore Griess and the First Trust Company of Lincoln, Nebraska, for the sum of $8,800.00 together with interest thereon from the — day of October, 1923, at the rate of 7% per annum, and the costs of this action; or in the event the judgment in this case be allowed the plaintiff, that this defendant have judgment over and against said plaintiff for one-half of the amount said plaintiff recovers.

Brown, Baxter, Van Dusen & Ryan, Attorneys for Defendant.

Duly sworn to by Rody Ryan. Jurat omitted in printing.

[fol. 40] [File endorsement omitted.]

[fol. 41] In District Court of Hamilton County

[Title omitted]

Reply to Answer and Answer to Cross-petition of Mari Tollefsen Todok—Filed Oct. 21, 1926

Comes now the plaintiff and for reply to the answer and for answer to the cross-petition of Mari Tollefsen Todok admits that the said defendant and cross-petitioner was the wife of Christian Knudson and the mother of this plaintiff and that the real estate described in plaintiff's petition was the homestead of deceased Christian Knudson, but denies that said Mari Tollefsen Todak is entitled to inherit any of the real estate of her deceased husband Christian Knudson for the reason she is an alien and is not entitled to inherit real estate in Nebraska by reason of no treaty between the United States and Norway.

Further answering the cross-petition of said Mari Tollefsen Todak this plaintiff alleges that this action is for the quieting of title in said real estate and is not an action for conversion of the proceeds received for said real estate by the defendant Union State Bank or others and this plaintiff denies that the said Mari Tollefsen Todak is entitled to

any share in said real estate for the reasons already set out herein.

Further answering plaintiff denies each and every material allegation in cross-petitioner's answer or cross-petition not specifically admitted in this reply and answer and in plaintiff's petition.

Craft, Edgerton & Fraizer, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 42] In District Court of Hamilton County

[Title omitted]

Answer of Bank of Harvard et al. to Cross-petition of Mari Tollefsen Todok—Filed Nov. 29, 1926

Come now the defendants, Union State Bank of Harvard, Nebraska, a corporation; Robert E. Brown and Anna S. Brown, his wife; H. G. Thomas, Administrator of the Estate of Christian Knudsen, deceased, and Theodore Griess, and for answer to the cross-petition of Mari Tollefsen Todok allege as follows, towit:

1. Deny each and every allegation contained in said cross-petition save and except such as constitute admissions of the allegations contained in the answer filed herein by these defendants.

2. Deny that said Mari Tollefsen Todok has any right, title, or interest, in and to any of the real estate of Christian Knudsen, Deceased, and denies that she is entitled to inherit and take any of said real estate as an inheritance in the State of Nebraska for the reason that she, the said Mari Tollefsen Todok, is an alien subject of the Kingdom of Norway and is not entitled to take and hold real estate in the State of Nebraska for the reason that no treaty exists between the United States of America, and the Kingdom of Norway whereby alien subjects of the Kingdom of Norway are permitted to acquire title by inheritance to real estate in the State of Nebraska.

3. That in the decree determining heirship made and entered by the County Court of Hamilton County, Nebraska, on October 21, 1926, in the matter of the estate of Christian Knudsen, deceased, the said Mary Tollefsen Todok was expressly excluded from inheriting any right, title, or interest in or to any real estate of said Christian Knudsen, deceased; that said Mari Tollefsen Todok has not appealed from said decree determining heirship and that the time for appeal on her part has expired.

4. That said Mari Tollefsen Todok was never a resident, inhabitant nor subject of the United States of America and never lived in the United States of America, and never was within the United States of America in her lifetime, and if now living is a resident, inhabitant and subject of the [fol. 43] Kingdom of Norway and never was and is not now eligible to acquire title by inheritance or otherwise to lands and real estate situated within the State of Nebraska in the United States of America.

Wherefore these answering defendants pray that the defendant Mari Tollefsen Todok take nothing by her cross-petition herein, but same be dismissed at her cost.

J. H. Grosvenor, Attorney for Above-named Answering Defendants.

Duly sworn to by Theodore Griess. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 44] In District Court of Hamilton County

[Title omitted]

Answer of the First Trust Company of Lincoln, Nebraska, to Petition of Intervention of Mari Tollefsen Todok—Filed Nov. 29, 1926

Comes now the defendant, The First Trust Company of Lincoln, Nebraska, and for answer to the petition of intervention of cross-petition of Mari Tollefsen Todok, says:

1. Denies each and every allegation contained in said cross-petition, save and except such as constitute admissions of the allegations contained in the answer and cross-petition filed herein by this defendant.

2. Denies that said Mari Tollefsen Todok has any right, title or interest, in and to any of the real estate of Christian Knudsen, deceased, and denies that she is entitled to inherit and take any of said real estate as an inheritance in the State of Nebraska, for the reason that she, is an alien subject of the Kingdom of Norway and is not entitled to take and hold real estate in the State of Nebraska, for the reason that no treaty exists between the United States of America and the Kingdom of Norway whereby alien subjects of the Kingdom of Norway are permitted to acquire title by inheritance to real estate in the State of Nebraska.

3. That in the decree determining heirship made and entered by the County Court of Hamilton County, Nebraska, on October 21, 1926, in the matter of the estate of Christian Knudsen, deceased, the said Mari Tollefsen Todok was especially excluded from inheriting any right, title or interest in or to any real estate of said Christian Knudsen, deceased; that said Mari Tollefsen Todok has not appealed from said decree determining heirship and that the time for appeal on her part has expired.

4. That said Mari Tollefsen Todok was never a resident, inhabitant nor subject of the United States of America and never lived in the United States of America, and never was within the United States of America in her lifetime, and if now living is a resident, inhabitant and subject of the Kingdom of Norway and never was and is not now eligible to acquire title by inheritance or otherwise to lands [fol. 45] and real estate situated within the State of Nebraska in the United States of America.

II

For further answer and by way of cross-petition to the said petition of Mari Tollefsen Todok, this defendant alleges:

1. That this defendant is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Nebraska.

2. That on or about September 22, 1924, for value received, Theodore Griess made, executed, acknowledged and delivered to this defendant the notes and mortgages more particularly described in the answer and cross-petition of this defendant to the amended petition of the plaintiff herein, all of which allegations and exhibits in said cross-petition are hereby referred to and made a part of this cross-petition.

3. That this defendant accepted said mortgages in good faith, paid full value therefor as alleged, and is a bona fide — of said mortgagee.

Wherefore defendant prays that the claim of Mari Tollefsen Todok may be dismissed, and that the mortgages recorded in Book 78, page 270, and, in Book 78, page 286, be adjudged and declared to be first liens on the real estate therein described, and that defendant have and recover its costs herein.

The First Trust Company of Lincoln, Nebraska, Defendant, by Hall, Cline & Williams, Its Attorneys.

Duly sworn to by F. D. Williams. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 46] In District Court of Hamilton County

[Title omitted]

Reply of Mari Tollefsen Todak to the Answer of First Trust Co. of Lincoln et al.—Filed Dec. 1, 1926

Comes now the defendant Mari Tollifsen Todak and for her reply to the answer of the defendant First Trust Company of Lincoln, Nebraska, and Union State Bank of Harvard, Nebraska, a corporation, Robert E. Brown and Anna S. Brown, his wife, H. G. Thomas, Administrator of the Estate of Christian Knudson, deceased, and Theodore Griess denies each and every allegation contained in said answers except which admit the truth of this defendant's

answer and cross-petition and further excepting such allegations of said answers as are hereinafter expressly admitted, qualified and explained.

This defendant Mari Tollifsen Todak alleges that her deceased husband Christian Knudson acquired title to the lands involved in this law suit and took possession thereof prior to March 16, 1889, and remained in possession thereof until his death August 6, 1923, and at the time he so acquired title and took possession thereof, he was a resident of Nebraska and he never thereafter became a citizen of the United States and was not a citizen of the United States at the time of his death.

This defendant further alleges that in the absence of any treaty between the United States and Norway she is entitled to inherit real estate of her deceased husband which was acquired by him prior to the passage of Section 5687 of the Compiled Statutes of Nebraska, 1922, which act was approved March 16, 1889, but that this defendant also alleges that by virtue of the treaty between the United States and Norway of the 3rd day of April, 1783 (Article 6), and the treaty between the United States and Norway dated the 4th day of July, 1887, proclaimed Jan. 19, 1828 (Article 17), which treaty is still in force and effect between Norway and the United States, she is entitled to inherit real estate of her deceased husband, although this defendant never took up her actual residence within the State of Nebraska [fol. 47] by coming to Nebraska to live with her husband.

This defendant alleges that the County Court of Hamilton County, Nebraska, in its order of October 21, 1926, in the estate of Christian Knudson, deceased, was without jurisdiction to determinate the rights of this defendant in the real estate involved in this suit and that part of the order of said court purporting to determine the interest of this defendant in the real estate involved in this suit is void.

Defendant further alleges that on or about the years 1886 and 1888, at which time the title to this land involved in this law suit was acquired by Christian Knudson, deceased, that this defendant was then, as the wife of said Knudson, although at that time residing in Norway, and has been at all times since and is now entitled to inherit her interest in said real estate or to hold the legal title thereto and has

at all times since the acquisition of said land by the deceased had and maintained and still has her homestead right and interest in said real estate by reason of her marriage to said Knudson and of the further fact that this defendant has never intended to have or has never claimed a legal residence other than that of her husband.

That this defendant has never had any property other than her interest in her husband's and she has at all times been solely dependent upon deceased for her support.

Wherefore this defendant prays that the deeds described in the plaintiff's amended petition alleged to have been signed by deceased on July 17, 1923, and all subsequent deeds, mortgages and conveyances involving real estate in question in this suit be cancelled and set aside or that this defendant have judgment against each and all other defendants herein in the sum of $8800.00 together with interest thereon at the rate of seven per cent per annum as prayed in defendant's answer and cross-petition herein and for such other and further relief as may seem to the Court just and equitable.

Rody Ryan, Attorney for Mari Tollifsen Todak, defendant.

[fol. 48] *Duly sworn to by Rody Ryan. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 49] In District Court of Hamilton County

Knute C. Engen, Plaintiff,

vs.

Union State Bank of Harvard, Nebraska, a Corporation; LeRoy A. Megrue and Bertha M. Megrue, His Wife; Robert E. Brown and Anna S. Brown, his wife, and H. G. Thomas, Administrator of the Estate of Christian Knudson, Deceased; Theodore Griess and First Trust Company of Lincoln, Nebraska, and Mari Tollefsen Todok, Defendants

Decree—Filed July 19, 1927

Now on this 19th day of July, 1927, the same being one of the days of the regular April term of the District Court

of Hamilton County, Nebraska, this cause came on for decision upon the amended petition of the plaintiff, the answers of the defendants and the cross-petition of the defendant Mari Tollefsen Todok and the answer and reply thereto, and the evidence, and the Court having carefully considered the pleadings and the evidence and having heard the argument of counsel for the various litigants herein, finds for the plaintiff Knute C. Engen and the defendant Mari Tollefsen Todok, finding that each is entitled to an undivided one-half interest in the real estate involved herein and described hereinafter.

The Court specially finds as follows:

1. That Christian Knudson, sometimes known as Christian Engen, they being one and the same person, was an alien, a citizen of Norway, having never completed his naturalization in the United States, and the defendant and cross-petitioner, Mari Tollefsen Todok, was his legal wife and was living in Norway at the time of his death.

2. That Christian Knudson settled in Nebraska in 1887 and established a homestead upon the North Half of the Southwest Quarter and the South Half of the Northwest Quarter of Section 35, Township 9, North, Range 7, West of the 6th P. M. in Hamilton County, Nebraska, shortly thereafter, and continued to reside upon said real estate as his homestead until his death, August 6, 1923.

[fol. 50] 3. That the Warranty Deed described in plaintiff's petition alleged to be signed by said Christian Knudson by mark, conveying to LeRoy A. Megrue and Bertha M. Megrue, his wife, the North Half of the Southwest Quarter, Section 35, Township 9, North, Range 7, West of 6th P. M. in Hamilton County, Nebraska, was void and without force and effect for the reason that said land was a part of the homestead of said Christian Knudson and said deed was not signed and acknowledged by his wife, the defendant Mari Tollefsen Todok.

4. That the Warranty Deed signed by said Christian Knudson by mark conveying to Robert E. Brown and Anna S. Brown the South Half of Northwest Quarter of Section 35, Township 9, North, Range 7, West of 6th P. M. in Hamilton County, Nebraska, was void for the same reason.

5. That the deed from LeRoy A. Megrue and Bertha M. Megrue, conveying to the Union State Bank of Harvard, Nebraska, the North Half of the Southwest Quarter of Section 35, and the deed from Robert E. Brown and Anna S. Brown, conveying to the Union State Bank of Harvard, Nebraska, the South Half of the Northwest Quarter of Section 35, all in Township 9, North, Range 7, West of 6th P. M. Hamilton County, Nebraska, are void for the reason that said grantors were without title thereto.

6. That the warranty deed by the defendant Union State Bank of Harvard, Nebraska, conveying all of said real estate to defendant Theodore Griess, and the mortgages given by said defendant Theodore Griess to the defendant First Trust Company of Lincoln, Nebraska, one in the amount of $5000 and one in the amount of $4500 and the further deed by said defendant Theodore Griess of said real estate to the defendant Union State Bank of Harvard, Nebraska, subject to said mortgages, were all null and void and of no force and effect for the reason that none of the grantors therein had title to said real estate.

7. That the quit claim deed from plaintiff Knute C. Engen to the above described real estate conveying same to LeRoy A. Megrue, Bertha M. Megrue, Robert E. Brown and Anna S. Brown, was null and void and of no force and effect for the reason that same was obtained without consideration.

8. That Christian Knudson, on his death, August 6, 1923, died intestate, leaving as his sole and only heirs at law, his wife, the defendant, Mari Tollefsen Todok and his son, the plaintiff, Knute C. Engen, and that said real estate descended to them, half and half, share and share alike.

[fol. 51] To all of which findings the defendants and each of them, except the defendant Mari Tollefsen Tokok, excepts.

9. That there was no fraud, conspiracy or undue influence exercised by the defendants or their agents on the said Christian Knudson as alleged in plaintiff's petition.

To which finding the plaintiff, Knute C. Engen, and the defendant Mari Tollefsen Todok, excepts.

10. That since this action was commenced, the defendant Union State Bank of Harvard, Nebraska, has been found

and declared insolvent and Van E. Peterson appointed by the District Court of Clay County, Nebraska, receiver, and that he should be substituted as defendant for said Union State Bank.

11. That the said Van E. Peterson, receiver of defendant Union State Bank of Harvard, Nebraska, has executed and delivered a deed of said real estate to the Nebraska State Bank of Harvard, Nebraska, which deed has not been filed for record; that the said Nebraska State Bank is now in possession of said premises and should be made a party to this action.

It is, therefore, ordered, adjudged, and decreed by the court that Van E. Peterson, receiver of the Union State Bank of Harvard, Nebraska, be and he hereby is substituted for the defendant Union State Bank of Harvard, Nebraska; that the Nebraska State Bank of Harvard, Nebraska, be and hereby is made a party defendant to this action; that the title to the North Half of the Southwest Quarter and to the South Half of the Northwest Quarter of Section 35, Township 9, north Range 7, West of 6th P. M. in Hamilton County, Nebraska, be and the same hereby is forever quieted in the plaintiff Knute C. Engen and the defendant Mari Tollefsen Todok, as tenants in common, each owning an undivided one-half therein and thereto, and that the Warranty deed to said real estate from Christian Knudson to LeRoy A. Megrue and Bertha M. Megrue, dated July 17, 1923, conveying to said grantees the North Half of Southwest Quarter of Section 35, Township 9, North, Range 7, West 6 P. M., recorded in Book 32, page 20 of the Deed Records of Hamilton County, Nebraska, also the Warranty Deed from Christian Knudson, signed as Christian Engen, to Robert E. Brown and Anna S. Brown, dated July 17, 1923, conveying to said grantees the South Half of the Northwest Quarter of Section 35, Township 9, North, Range 7, West 6 P. M. in Hamilton County, Nebraska, and recorded in book 32 page 22 of the deed records of Hamilton County, [fol. 52] Nebraska, also the Warranty Deed from LeRoy A. Megrue and Bertha M. Megrue, to the Union State Bank of Harvard, Nebraska, conveying the North Half of the Southwest Quarter of Section 35, Township 9, North, Range 7, West of 6th P. M. Hamilton County, Nebraska, dated Oc-

tober 2, 1923, and recorded in book 32, page 21 of the Deed records of Hamilton County, Nebraska, also the warranty deed from Robert E. Brown and Anna S. Brown to the Union State Bank of Harvard, Nebraska, dated September 17, 1923, conveying the South Half of the Northwest Quarter of Section 35, Township 9, North, Range 7, West 6 P. M. in Hamilton County, Nebraska, and recorded in Book 32 page 23, of the deed records of Hamilton County, Nebraska, also the warranty deed from the Union State Bank of Harvard, Nebraska, to Theodore Griess, dated September 5, 1924, conveying the South Half of the Northwest Quarter and the North Half of the Southwest Quarter of said Section 35, Township 9, North, Range 7, West 6th P. M. in Hamilton County, Nebraska, and recorded in Book 31, page 195 of the deed records of Hamilton County, Nebraska, also the mortgage deed of said Theodore Griess to the First Trust Company of Lincoln, Nebraska, dated September 22, 1924, conveying the South Half of the Northwest Quarter of said Section 35, Township 9, North, Range 7, West of 6 P. M. in Hamilton County, Nebraska, for the sum of $5,000.00 and recorded in Book 78 page 270 of the mortgage records of Hamilton County, Nebraska, also the mortgage deed from said Theodore Griess to the First Trust Company of Lincoln, Nebraska, dated September 22, 1924, conveying the North Half of the Southwest Quarter of said Section 35, Township 9, North, Range 7, West 6 P. M. in Hamilton County, Nebraska, in the sum of $4,500. and recorded in Book 78 page 286 of the mortgage records of Hamilton County, Nebraska, also the warranty deed from said Theodore Griess to the said Union State Bank of Harvard, Nebraska, dated September 26, 1924, conveying the South Half of the Northwest Quarter of Section 35, Township 9, North, Range 7, West 6 P. M. and recorded in book 32 page 306, also the deed of said Theodore Griess to the Union State Bank of Harvard, Nebraska, dated September 26, 1924, conveying the North Half of Southwest Quarter of Section 35, Township 9, North West 6th P. M. and recorded in book 32 page 305 of the deed records of Hamilton County, Nebraska, also the quit claim deed from Knute C. Engen to LeRoy A. Megrue, Bertha M. Megrue, Robert E. Brown and Anna S. Brown, conveying the South Half of the Northwest Quarter and North Half of the Southwest

Quarter of Section 35, Township 9, North, Range 7, West 6 P. M. Hamilton County, Nebraska, dated January 12, [fols. 53 & 54] 1924, and recorded in book 31, page 491 of the deed records of Hamilton County, Nebraska, on March 12, 1926, also the unrecorded deed from Van E. Peterson, receiver of the Union State Bank of Harvard, Nebraska, to the defendant Nebraska State Bank of Harvard Nebraska, conveying the South Half of the Northwest Quarter and the North Half of the Southwest Quarter of Section 35, Township 9, North, Range 7, West 6 P. M., Hamilton County, Nebraska, be and the same hereby are set aside and held to be null and void and of no force and effect and a cloud upon the title of the said Knute C. Engen and the said Mari Tollefsen Todok, and the same are ordered cancelled and stricken from the deed and mortgage records of Hamilton County, Nebraska; and the defendants Union State Bank of Harvard, a corporation, LeRoy A. Megrue and Bertha M. Megrue his wife, Robert E. Brown and Anna S. Brown, his wife, H. G. Thomas, Administrator of the estate of Christian Knudson, deceased, Theodore Griess and First Trust Company of Lincoln, Nebraska, and Van E. Peterson, receiver of the Union State Bank of Harvard, Nebraska, and Nebraska State Bank of Harvard, Nebraska, and all persons claiming under, by or through them or any of them, are hereby forever enjoined from claiming or asserting any right, title or interest in and to said North Half of Southwest Quarter and the South Half of Northwest Quarter of Section 35, Township 9, North, Range 7, West 6 P. M. Hamilton County, Nebraska, or any part thereof.

It is further ordered, adjudged and decreed that the costs be taxed to the defendants, exsept defendant Mari Tollefsen Todok.

To all of which the defendants and each of them, except the defendant Mari Tollefsen Todok, excepts, and give notice of appeal in open court.

The several motions of defendants for new trial are overruled, to which the said defendants duly excepted, and upon application of the defendants made in open court to fix the amount of supersedeas bond, such bond is fixed in the sum of $3000. for the defendant Nebraska State Bank of Harvard, Nebraska, who are in possession of said real estate, and for all other defendants each in the sum of $500

and are given forty days from the rising of the court within which to prepare and serve bill of exceptions.

By the Court:

L. S. Hastings, District Judge.

[File endorsement omitted.]

[fol. 55] In District Court of Hamilton County

Bill of Exceptions—Filed in Supreme Court Feb. 11, 1928

Erick K. Engen, called as a witness in behalf of the plaintiff and after being first duly sworn, testified as follows:

Examination by Mr. Edgerton:

1124 Q. Your name?

A. Erick K. Engen.

1125 Q. What does your middle initial "K" stand for?

A. Knudson.

1126 Q. How old are you Mr. Engen?

A. Sixty-nine.

1127 Q. Where were you born?

A. In Norway.

1128 Q. In what year?

A. In 1857.

1129 Q. What were the names of your father and mother?

A. My fathers name was Knute Engen and my mothers name was Bridgit.

1130 Q. What brothers and sisters do you have Mr. Engen?

A. I had two brothers and two sisters.

1131 Q. Your brothers names?

A. My own brother was Ole.

1132 Q. And the other one?

A. Christian Knudson they call him.

1137 Q. How old were you Mr. Engen when you came to America?

A. I was ten years old.

1138 Q. That would be in 1868?

A. Yes sir.

1139 Q. Did your brother, Chris, come with you at that time?

A. Yes sir.

1140 Q. How old was he at that time?

A. He was born in 1845, the 10th of January, about twenty-three years old.

[fol. 56] 1142 Q. At the time that you and he came to this country was he a married man?

A. Yes sir.

1143 Q. To whom was he married?

A. He married Mary Todok.

1144 Q. How long had he and this lady been married before you and he came to this country?

A. They must have been married about a year, married in '67 in the Spring.

1145 Q. Was it a church wedding?

A. Yes sir.

1146 Q. And did they live together there?

A. Until we came to this country in the Spring of '68.

1147 Q. What time of the year of '68 was it you sailed from Norway?

A. We left our home in Norway about the 16th of May.

1148 Q. Where did you go to first?

A. We went to Christiana.

1149 Q. How far did you live from Christiana?

A. About a hundred miles.

1150 Q. Your brother Christian at the time you went to Christiana had he intended to go to America?

A. I don't think he did.

1151 Q. Just explain that to the court?

A. One thing he was in the army, sold-er, and if he had lived there he would have been poor and he thought his wife would come after him and he asked my father if he had money enough to pay his fair across and he did so he came to this country.

1152 Q. Do you remember the date when you landed in America?

A. No I can't tell you, I think we landed in Wisconsin the 22nd of June, 1868.

1153 Q. You landed in New York I assume?

A. We came to Quebec.

1154 Q. You went to Quebec instead of New York?

A. Yes sir.

[fol. 57] 1155 Q. On the 22nd day of June 1868 you reached Madison?

A. Yes sir.

1156 Q. How long did you and your brother stay in Madison?

A. We stayed there about ten years.

1157 Q. Did you come out to Nebraska together in 1878?

A. He came here first in 1878.

1158 Q. Had he purchased any land in Wisconsin?

A. No sir.

1159 Q. Now when did you come to Nebraska?

A. I came out here in the Spring of '88.

1160 Q. Ten years later?

A. Yes sir.

1161 Q. During this ten years did you visit him here?

A. No, I was out here in the winter just before I moved.

1162 Q. Do you remember Mr. Engen whether your brother Chris. got letters from his wife while in Wisconsin?

A. Yes, quite often at first.

1164 Q. Do you know whether your brother wrote to her to come?

A. Yes I know he did.

1165 Q. And did you see any letters coming back from her?

A. Yes I did.

1168 Q. Did he tell you what the contents of the letters were?

A. Sometimes.

1171 Q. When you came to Nebraska in 1888 where was your brother living?

A. He was living on his home place.

1172 Q. And that is this 160 acres in controversy here?

A. Yes sir, section 35-9-7.

1173 Q. Who was living there with him at that time?

A. My parents were there at that time.

1174 Q. When did your parents come to this country?

A. Mother came in 1886 and father came the next Spring, 1887.

1175 Q. Do you know when your father and mother were born?

A. Yes sir.

[fol. 58] 1176 Q. When was your mother born?

A. The 16th of June 1818 and father was born the 3rd day of February, 1819.

1177 Q. And then your mother came in '86 and your father in '87?

A. Yes sir.

1178 Q. And in '88 when you came they were living there with him?

A. Yes sir.

1180 Q. Tell what your brother did there in the family when the father and mother was there with reference to care and maintenance?

A. He was the one that really took care of them, mother kept house for him, he bought the groceries and such things, he was the head of the family.

1181 Q. And what they could they did around there?

A. Yes sir.

1182 Q. Following 1888 have you lived continuously in Hamilton County yourself?

A. Yes sir.

1183 Q. How far is your present home from this quarter section?

A. About two miles and a half.

1184 Q. When did you buy your place?

A. In the Spring of '88 and lived there ever since.

1185 Q. What is the fact and state whether or not during the years since you have been frequently at your brother's place?

A. Yes sir.

1186 Q. How long did your father continue to live there with your brother?

A. He died in 1900, the last day of January.

1187 Q. And do you know how old a man he was at that time?

A. Eighty-one years old.

1188 Q. How long did your mother continue to live there?

A. She lived there with him until the Fall of 1905, she took sick and we took her home to our place.

1189 Q. When did she die?

A. The 8th day of April, 1906.

[fol. 59] 1190 Q. How old was she?

A. About eighty-eight years.

1191 Q. What was the condition of her health?

A. It was good until she took sick and died.

1192 Q. After your father died was just Chris and your mother living there?

A. Yes just the two of them living there.

1193 Q. And she did the housekeeping?

A. Yes sir.

1194 Q. Did, what you described as what he was doing for them continue after the father's death?

A. Yes sir.

1195 Q. You know the plaintiff, Knute C. Engen, Mr. Engen?

A. Yes sir.

1196 Q. When did Knute C. Engen come to this country?

A. He came to Nebraska in 1893, in the Spring.

1197 Q. When did you first see him or was that in '93?

A. To Nebraska.

1198 Q. When was the first time you ever saw him?

A. That was in that same Spring.

1199 Q. How old a man was he at that time?

A. About twenty-three years old.

1200 Q. Married or single?

A. Single.

1201 Q. And where did he go?

A. He stayed there with his father, my brother.

1202 Q. Did he do anything there?

A. Yes, he worked for his father that summer.

1203 Q. How long did he stay there with his father?

A. He stayed there, I guess, about a year.

1204 Q. Then where did he go?

A. He moved on another eighty that belonged to my brother and batched.

[fol. 60] 1205 Q. Did he stay there on your brother's place until he went to Alaska in '97?

A. Yes sir.

1206 Q. At that time when he left for Alaska was he married?

A. No he was not.

1207 Q. After your brother left Mr. Knudson's place and went over to your place did your brother continue to live on his home place?

A. Yes he lived there and batched.

1208 Q. The testimony is that he was blind when he died, about when did he get blind?

A. Nearly blind for four or five years nearly blind, at the last he couldn't see at all, his eyes were always weak as far as I can remember.

1209 Q. At the time he died what is the fact as to whether or not his own furniture was still in his house?

A. Yes it was.

1210 Q. What did that consist of?

A. A few chairs, bureau and stove I guess, wasn't very much.

1211 Q. A bed?

A. Yes sir.

1212 Q. Personal furnishings, keepsakes?

A. Yes sir.

1213 Q. From the time your mother left there up until he died, I wish you would tell the Court what part of the time he stayed there at his home?

A. He lived there at first after mother left, stayed there quite a while alone and stayed with McGrew's part of the time then another man moved in, Joe Taylor, then he stayed with him and they batched on the home place.

1214 Q. How long ago was that?

A. Couple of years.

1215 Q. When Joe Taylor was there whose furniture was used, your brothers?

A. Yes sir.

[fol. 61] 1216 Q. After he became blind how much of his time did he spend there?

A. I couldn't tell, he would go over there every once-in-awhile, got his meals over to McGrew's, walk over there every once-in-a-while, always called it his home.

1217 Q. And how far was the McGrew house from his house?

A. It must have been about twenty-five rods, only a little ways across the road.

1218 Q. Do you know whether he could go over there alone during the last few years?

A. Yes he could. He would stay awhile over there, sometimes he would stay all night.

1219 Q. Mr. Engen do you know of his sending funds back to his wife back in Norway?

A. Yes I do.

1220 Q. Tell the Court what you know about that?

A. I know at first he would send money quite often, then I guess he kind of neglected it for a good many years until his son came here, I know that he sent her money, then after his son came here he sent her money, the last time I know of I wrote a letter for him and he sent her $111.00 enough for 600 krones in Norway money.

1221 Q. When was that?

A. That was in '22 the year before he died.

1222 Q. Did you get a letter back from her saying she received the money?

A. Yes I got a letter and she thanked him for the money, said it was welcome in the shape she was in.

1235 Q. How frequently Mr. Engen during the last two or there years did your brother come over to visit you?

A. The last two or three years he didn't come over very often, the last time was about a year before he died, he was there a few days.

1236 Q. Did you see him over to McGrew's or his home place just before he died?

A. Yes sir.

[fol. 62] 1237 Q. When did you last see him?

A. I was there when he died on Monday the 6th of August.

1238 Q. Was he unconscious for sometime before he died?

A. No he wasn't.

1239 Q. How long had you been there before he died?

A. Not more than a couple of hours.

1240 Q. Did you see him the day before?

A. I saw him the day he took sick and I was there on Friday and Saturday.

1241 Q. What was his condition when you saw him Thursday?

A. He was in bad shape, he was sick.

1242 Q. Did you see the bottle of wine there that was testified to at that time?

A. No, I didn't see it.

1243 Q. Any talk about business matters?

A. Not at all.

1244 Q. After he died were you there in the afternoon when Mr. Thomas came out?

A. No, I was not, I went home right after he died, Mr. McGrew took me home.

1245 Q. I ask you whether your brother and his wife were living together before he came to this country?

A. Certainly they was.

1246 Q. When Knute came to this country do you know of your brother sending him money to come from North Dakota here?

A. Yes sir.

1247 Q. Do you know of the time he was in Alaska of your brother sending him money to come home?

A. No, he sent him money a couple of years before and he sent $50.00 but he didn't come at that time, it was a couple years after that he came.

1354 Q. And when your brother stayed in Harvard with Roy McGrew do you know of his going back to the home place during that year?

A. Yes he went back quite often.

1356 Q. How, during all these years, did he always refer to this place, the 160 in controversy?

Mr. Grosvenor: That is objected to as incompetent, irrelevant and immaterial, hearsay testimony, self-serving declarations.

Overruled.

A. Well when we used to talk about it he would always talk about it as his home when he was away or at our place he would say he was going back home, always called it his home.

[fol. 63] 2874 Q. Now do you know of your brother going to the Court and taking out his first naturalization papers?

Mr. Grosvenor: That is objected to as incompetent, irrelevant and immaterial, no proper foundation laid, for the further reason that it is accumulative and repetition of testimony heretofore taken in the trial of this case.

Overruled.

2875 Q. Do you know?

A. Yes I do remember when he went to take out his first papers.

2876 Q. And where?

A. Madison, Wisconsin.

2877 Q. What year?

A. I can't tell you exactly but I think in 1870.

2878 Q. About two years after you reached this country?

A. Yes sir.

2881 Q. Did you see his first papers that were given him by the officers?

A. Yes several times.

2882 Q. Now when did your brother Ciristian Knudson leave Wisconsin and come to Nebraska?

A. He left in May of 1878.

2883 Q. When did your father and mother come to Nebraska?

A. Mother came in 1886 July I think, and father came one year later 1887 along in May.

2884 Q. Where did they establish their home?

A. With my brother Chris.

2885 Q. And you came in 1888?

A. Yes sir.

2886 Q. At the time your father came here what deformity did he have?

A. He had a tumor under his arm.

2887 Q. What arm?

A. His right arm.

2888 Q. How large was it?

A. It was as large as my knee because he couldn't get [fol. 64] his arm down, held it up like this here (demonstrating).

2889 Q. And during the years following that did that tumor grow in size?

A. No it didn't seem to grow very much, later on it didn't grow very much.

2890 Q. After you came did you see your brother's first naturalization papers, after you came to Nebraska?

A. No I don't think I did.

2893 Q. When did you talk with him about his last papers?

A. Well it was shortly after I found out about that law.

2894 Q. At the time the law was changed?

A. Yes sir.

2895 Q. Where did you talk with him?

A. I think it was at our home.

2896 Q. What was said by your brother as to whether or not he had taken out his final papers?

Mr. Grosvenor: That is objected to as incompetent, irrelevant and immaterial, calling for hearsay.

Overruled.

A. Well I told him that he couldn't vote, that he would have to take out them or he couldn't vote, he said he wasn't going to bother with them and he never did try to vote again.

Mr. Grosvenor: We move to strike out the answer as not responsive.

By the Court: After "He never voted" may be stricken out.

2897 Q. Do you know as to his voting, whether he voted after that?

A. I know.

2898 Q. Did he vote after that?

A. He didn't vote after that.

Mr. Grosvenor: That is objected to as incompetent, irrelevant and immaterial, not the best evidence.

Overruled.

2899 Q. Did he vote after that?

A. He didn't vote after that.

[fol. 65] 2900 Q. Mr. Engen when your father came to this country what property did he have, if any?

A. He didn't have any property, he had a little money.

2901 Q. How much?

A. Between fifteen and sixteen hundred.

2902 Q. And did your mother have any money?

A. No.

2903 Q. What language did they speak?

A. Norwegian.

2904 Q. Could they speak English?

A. No sir, they couldn't.

2905 Q. What did your father do with that money?

A. I borrowed some of it and my brother Henry Severson got $500.00 and I got $900.00.

2906 Q. When did you get the $900.00?

A. In '86.

2907 Q. When did Severson get the $500.00?

A. In '87.

2908 Q. What did you do with the money that you got?

Mr. Grosvenor: That is immaterial.

Sustained.

2909 Q. During how long a time did you keep that money?

Mr. Grosvenor: The same objection.

Overruled.

A. I had that money when he died.
2910 Q. When your father died?
A. Yes.
2911 Q. Did you pay him regularly the interest on it?
A. I did not.
2912 Q. Why not?
A. Because I didn't have it and they didn't really need it.
2913 Q. Did you pay him anything on it?
A. Not very much.

Mr. Grosvenor: That is objected to as incompetent, irrelevant, and immaterial.

Overruled.

[fol. 66] 2914 Q. I think you said before that your brother supported your father and mother?
A. Yes he did.
2915 Q. Was your father able to work and support himself?
A. No sir he could not at that time.
2916 Q. With this deformity under his arm was there any steady employment that he could get?

Mr. Grosvenor: That is objected to as incompetent, irrelevant and immaterial, leading and suggestive.

Sustained.

2917 Q. What were the facts there as to your father being able to work steadily at anything?

Mr. Grosvenor: That is objected to as incompetent, irrelevant and immaterial.

Overruled.

A. His age was one defect and that tumor that he had was another.
2918 Q. What kind of work was he able to work at?

A. He was able to do chopping and thing like that, never drove a work team in Wisconsin he work and grubbed and chopped wood and such as that.

2919 Q. How old was your father when he died?

A. He was 81 years old.

2920 Q. And how old was your mother when she died?

A. She was nearly 88.

2921 Q. Do you know whether Severson repaid any of those funds that he borrowed?

A. I don't think he did because I saw a note when father died and no indorsement on it.

2922 Q. When was this note dated?

A. I can't say, but it must have been in 1887 when we got the money.

2923 Q. Who paid your father's funeral expenses?

A. I did.

2924 Q. He died in what year?

A. He died in 1900.

2925 Q. During what years did that condition apply when you said you weren't able to pay the principal or interest?

A. Along in the '90's. '92 and up until the latter part of the '90's.

2926 Q. During those years was your mother able to support herself?

A. No I don't think so.

[fol. 67] 2927 Q. Or to take care of herself and support herself?

A. She did a little house work for my brother that is all she could do.

2928 Q. Did your brother help her about the house work?

A. Yes he did once in a while.

2929 Q. And after your father's death your mother continued to live there until shortly before her death?

A. Yes sir.

2930 Q. That was with Christian Knudson in his home?

A. Yes sir.

2931 Q. What was the condition of her health the last few years of her life?

A. Well she was pretty good for an old woman like she was.

2932 Q. How long was she in your home before she died?

A. About the middle of September until the 8th day of April, the next Spring that was in 1905.

2933 Q. What was the condition of her health during that time?

A. She was sick in bed.

2934 Q. At the time you took her over to your home was she sick in bed?

A. Yes sir.

2935 Q. And had been for sometime?

A. She was able to be up but she was feeling sick, that is the reason we took her home, nobody there to take care of her.

No cross-examination.

Witness dismissed.

Further examination of the witness Eric K. Engen by the Court:

2936 Q. Mr. Engen did you ever pay that money back to your father?

A. No sir.

2937 Q. Did they have your note for it?

A. Yes sir they had my note for it.

2938 Q. Did they ever give it back to you?

A. No.

Witness dismissed.

[fol. 68] Mrs. Bertha McGrew, called as a witness in behalf of the plaintiff and after being first duly sworn, testified as follows:

Examination by Mr. Edgerton:

222 Q. You may state your name?

A. Mrs. Bertha McGrew.

223 Q. Where do you live?

A. At Harvard, Nebraska, 6 miles north.

224 Q. In what county?

A. Hamilton County.

225 Q. How long have you lived in Hamilton County?

A. About forty-seven years.

226 Q. You were born in Hamilton County?

A. Yes sir.

227 Q. What was your maiden name?

A. Severson.

228 Q. And your mother's name?

A. Mary Engen.

229 Q. What relation was she to Christian Knudson?

A. Sister.

230 Q. What relation to Erick K. Engen?

A. Sister.

231 Q. From what country did your mother come?

A. Norway.

232 Q. Did you know Christian Knudson?

A. Yes sir.

233 Q. Where was he living at your earliest recollection of him?

A. At his old home place.

234 Q. Where were you living at that time?

A. I was living about a half mile from there on my father's homestead.

[fol. 69] 235 Q. And where do you now live with reference to the Christian Knudson home place?

A. Right across the road from him.

236 Q. How far is your house from his house?

A. Well I should judge about 20 rods.

237 Q. On what section is your home of yourself and husband?

A. Thirty-four.

238 Q. And in what section was his land?

A. Thirty-five.

239 Q. What part,—do you know what part of Section Thirty-five his house was located on?

A. It was on the Southwest Quarter.

240 Q. Of thirty-five.

A. Yes sir.

241 Q. When were you born Mrs. McGrew?

A. The year 1879.

242 Q. Can you tell approximately when it was when you first recollect your uncle Christian Knudson?

A. Well about as old as I can remember anything I remember him and remember that he used to come to our place when I was a little girl.

243 Q. Do you remember when Eric K. Engen came to Hamilton County?

A. I remember but not exactly the year.

244 Q. Was it sometime after your first recollection of Christian Knudson?

A. Yes sir, at least 10 years later.

245 Q. Where is Eric K. Engen's home with reference to your home?

A. Three miles northwest of us.

246 Q. Has he lived in that vicinity ever since he came?

A. Yes sir.

247 Q. Later did the father and mother of Christian Knudson come to this country?

A. Yes sir.

[fol. 70] 248 Q. Where did they establish their home?

A. They lived with Uncle Chris.

249 Q. Do you know approximately when they came?

A. I think in about 1886.

250 Q. What was their names?

A. Knute and Bridget Engen.

251 Q. How long, if you know, did your grandfather and grandmother live there?

A. My grandfather died there in 1900.

252 Q. And your grandmother?

A. She lived there until 1906, I believe it was that she was taken sick and taken to my other uncle, Eric K. Engen, and she died there.

253 Q. How old was your grandfather when he died?

A. Eighty-one.

254 Q. And your grandmother died what year?

A. 1906 I believe.

255 Q. How old was she at that time?

A. Eighty-eight.

256 —. Do you know the plaintiff, Knute C. Engen?

A. Yes sir.

257 Q. When did you first know him?

A. When he first came here about 30 years ago.

273 Q. Do you know of Christian Knudson,—know anything about Christian Knudson's wife?

A. I don't know anything about her only just hearing.

274 Q. From Christian Knudson himself?

A. My mother spoke of her so I knew there was such a woman. I never asked Uncle Chris about here.

275 Q. Christian Knudson died at your place?

A. Yes sir.

276 — What date?

A. The 6th of August 1923.

[fol. 71] 277 Q. What was the condition of his eyesight at that time?

A. He was totally blind at that time.

278 Q. How long had he been totally blind?

A. For about 10 years that he couldn't see to distinguish objects.

292 Q. At that time Mrs. McGrew or just before that had Mr. Knudson returned to your house from somewhere else?

A. He used to go to town and back and I can't say just what date he came back prior to that some time in July we had been to town.

293 Q. For what period of time?

A. I can't remember how long he was gone at that time, some time he would stay a week and take two treatments and then come back on out.

294 Q. During that summer how much of the time, if any, did he spend over to his home?

A. Days when he felt good he would go over there every day.

295 Q. During the several years preceeding that what had been his habit with reference to his own home?

A. He made that his home and aimed to stay there, of course in later years he would take his meals with us later.

296 Q. What do you know with reference to his maintaining and keeping in his home furniture?

A. He had had some old furiture, he always had a bed and a little old bureau and an oil stove.

297 Q. During that 10 years that you say he was blind how much of the time would you say he spent at his own home approximately?

A. In the 10 years?

298 Q. Yes.

A. Well all of it practically, except the last three years.

299 Q. And what did he do in the last three years?

A. He spent most of his time with us.

[fol. 72] 300 Q. Did you talk with him in reference to his home?

A. Yes sir.

301 Q. What did he say?

A. He always referred to it as his home, he would go over there in the afternoon to take his nap, spoke of getting someone to stay with him and move back, said we would probably get tired of him, and always spoke of finding someone suitable and take them in.

302 Q. At any time did you ever hear him refer to it other than as his home?

A. No that was the only home he ever knew.

303 Q. For a number of years Joe Taylor was there with him?

A. Yes sir.

304 Q. Do you know about how many years Joe Taylor was there?

A. Possibly five years.

305 Q. How did they get along?

A. Joe in the first place was to stay there and cook and do the work and then he rented a little piece of corn land and in between times Joe would work it and that left Uncle Chris alone until night and at those times he came to our place and got his meals and then after that he came over and stayed with use and Joe had his room at Uncle Chris' house.

306 Q. At the time Uncle Chris died do you know whether any of the furniture belonged to anybody else besides your Uncle Chris?

A. No.

307 Q. Did it belong to anyone else?

A. No sir.

308 Q. What was done with it?

A. It was sold at the sale Joe Taylor held.

309 Q. Do you know of your Uncle Chris sending money back to his wife in Norway?

A. He never sent any through me but I knoe he has sent it.

[fol. 73] 310 Q. Did you hear him say he was sending money to her?

A. He told me two or three times that he was sending her money, showed me the envelope that his mother had addressed to her, took it to the bank.

384 Q. Mrs. McGrew just going back for a question—Do you know whether the dishes that were in the Christian

Knudson house were the dishes he had all the time he lived there?

A. Yes sir.

385 Q. And were the dishes he used during the time his father and mother lived there?

A. Yes sir.

386 Q. During the time they lived there did he support them there?

A. Yes sir.

387 Q. Can you tell the court approximately when in 1923 Christian Knudson went over to his home and slept there?

A. He used to go over in the afternoon, that last summer, and take a nap in the daytime but I can't remember when he stayed all night, but I know in the early Spring there came a snow in the evening when he was there and he stayed all night and I went over in the morning and he said he had stayed with Joe all night.

388 Q. He had a bed and mattress and quilts there?

A. Yes sir.

389 Q. And kept them there through all these years?

A. Yes sir.

392 Q. Over at this home of Christian Knudson what did he have in the way of a family album and personal articles that he owned?

A. He used to have an old truck with an old album in it and his father's old Bible and a few old things like that.

393 Q. Were those there up until the time of his death?

A. I think they were.

394 Q. Never brought to your house?

A. No.

[fol. 74] 1358 Q. Did you and Mr. McGrew live in Harvard one year?

A. Yes sir.

1359 Q. When was that?

A. We had our sale in March of '21 and moved the same day, the latter part of February or the 1st of March we moved back out, in March 1922.

1360 Q. During that year did Mr. Christian Knudson stay with you some?

A. Most of the time.

1361 Q. What is the fact as to whether or not he went back to his home place during that time?

A. During that time he was gone from our place and he was at his brother's place some and he was there with Joe some and he would stay there at the home place. In the Spring of '22 he went out and stayed at his home for about three weeks while we were moving and getting packed up and then for a week or two he just came for his meals and slept over there at his home.

Cross-examination of Mrs. Leroy A. McGrew.

Examination by Mr. Williams:

1362 Q. When you moved to Harvard in March 1921 at that time was Mr. Knudson living with you on the farm?

A. Yes sir.

1363 Q. When you moved he moved?

A. He went to his brother's and stayed during the time that we had our sale.

1364 Q. When you got located in town he came to you?

A. Yes sir.

Redirect examination of Mrs. Leroy A. McGrew.

Examination by Mr. Edgerton:

1365 Q. And stayed there as you have heretofore described?

A. Yes sir.

1366 Q. What did he take there, just his clothes?

A. Yes sir, about what he had and one change.

[fol. 75] 1367 Q. No furniture?

A. No.

1368 Q. No other property?

A. No.

Witness dismissed.

[fol. 76] Leroy A. McGrew, called as a witness in behalf of the plaintiff and after being first duly sworn, testified as follows:

Examination by Mr. Edgerton:

563 Q. State your name?

A. L. A. McGrew.

564 Q. What is your first name?

A. Leroy.

565 Q. Where do you live?

A. Harvard, Nebraska, Hamilton County.

566 Q. How long have you lived in Hamilton County Mr. McGrew?

A. Well I think about twenty-four years.

567 Q. And in the same part of the county where you now live?

A. Yes sir.

568 Q. What section is your home in?

A. Section Thirty-four.

569 Q. Town. Nine and Range Seven?

A. Yes sir.

570 Q. How long have you lived on that farm?

A. I have lived on that farm about sixteen years practically where I have built now, I have lived on the farm right close to twenty-four years.

571 Q. Where is that situated with reference to the farm of Christian Knudson?

A. Just across the road.

572 Q. It is in section thirty-five?

A. Yes sir.

573 Q. How long had you known him before he died?

A. I have known him ever since I have been in Hamilton County, knew him before by sight and the last twenty-three or twenty-four years I associated with him.

574 Q. Where was his house with reference to your house?

A. Almost straight east.

[fol. 77] 575 Q. How far?

A. Possibly about twenty rod- I should judge.

576 Q. What kind of a house did he have?

A. An "L" shaped house.

577 Q. How was it furnished?

A. Furnished very common like most of the old country people did it.

578 Q. When did you first know him?

A. About thirty years ago I met him.

579 Q. When you first knew him where was he living?

A. Where his house now stands.

580 Q. Who was living with him?

A. He was batching then.

581 Q. Did you also know him when his father and mother were there?

A. Yes sir. His father died about the time I moved up there but his mother lived with hi ı after that.

582 Q. After his father died was there just the two of them living there?

A. Just the two of them there.

583 Q. Back in that time twenty-six years ago, was he farming his own place?

A. Yes, a little further back than I can tell you I think he did farm it at that time, more of it.

590 Q. After Knute went west how did the old gentleman live and manage his place after Knute left in 1907?

A. Well he first came over to my place and stayed, stayed there some time but would go back and forth, went home some nights and sometimes he would stay all night at my place.

591 Q. How long has he been blind?

A. He was almost blind twenty-three years ago, but he became totally blind the last ten or twelve years.

592 Q. At the time he died he was at your place?

A. Yes sir.

[fol. 78] 593 Q. Had he been—what percent of the time had he been staying at your place?

A. He had been staying there just before he died all the time.

594 Q. For three or four years prior to that where had he lived and stayed?

A. He stayed with us practically all the time only when he would go to visit or across the road over home, he stayed all night once in a while over there, lots of times he would follow the fence with his cane.

595 Q. How did he speak of the home place?

A. He always said "Well I will go over home a little while" and he would go over there and sit down and take a nap.

596 Q. Have a bed and mattress?

A. Yes sir. He always had a bed tick, he could sleep all by himself, he said after a fellow has lived in a place as long as I have he hates to give it up.

597 Q. During the last three or four years he stayed at your house a good part of the time?

A. Yes sir.

598 Q. During that time was there any month that he didn't go back to his own home and stay part of the time?

A. I don't think so.

599 Q. Would he frequently stay more than one night?

A. Sometimes he would stay a couple of days. I would generally go over and see if he wanted to come home and he generally stayed until the weather got a little better.

600 Q. Prior to or going back to say, 1920, what was his habit in staying at home?

A. He always did just this way after he quit staying continuously at home he always went back a few times.

601 Q. Would he frequently go over alone?

A. Sometimes.

602 Q. How did he manage to find the way?

A. He would generally go out until he reached the road then follow the fence line with his cane.

[fol. 79] 625 Q. Do you remember Mr. McGrew when was the last time that Spring or Summer that he went over home to stay for any period of time?

A. The longest spell he took was in the Spring because it came on a snow storm and during the summer he was back and forth, during the summer he would be over there and stay in the afternoon and sometimes slept alnight, I can't give you the date.

626 Q. When was it he first made arrangements to come over and stay at your place?

A. About eighteen years ago he came to me and asked me if the time came when he couldn't take care of himself, said it was coming, can he depend on us, said it was worth a whole lot to have someone he could depend on.

627 Q. During all that eighteen years whenever he came you made him welcome?

A. Yes sir, and I should judge about twelve years ago he was in bed a month with the —

628 Q. Was he totally blind at that time?

A. Practically.

1369 Q. Mr. McGrew you remember the year that you and Mrs. McGrew lived in Harvard?

A. Yes sir.

1370 Q. What part of the time or how did Mr. Christian Knudson stay with you folks?

A. Well he was with us part of the time, I can't give you the exact dates, and he went out home and some to his brother's.

1371 Q. By "home" what do you mean?

A. His old home out there.

1372 Q. Did you at his request ever take him out there to his old home?

A. Yes sir, once or twice.

1373 Q. Did he stay over night?

A. Yes sir.

[fol. 80] 1374 Q. Just before you moved back on the farm what did he do?

A. Before we moved back he went on out there and stayed for quite a period.

1375 Q. Who was living on the farm there?

A. Joe Taylor.

* * * * * * *

[fol. 81] EXHIBIT "A"—Def. Bank. G. B. H.

Harvard, Nebraska, July 17th, 1923.

Mr. H. G. Thomas, Harvard, Nebraska.

DEAR SIR: I hereby deliver to you for the benefit of the grantees therein named, deeds made by me conveying lands as follows:

To Robert E. and Anna S. Brown, the South Half of the North West Quarter, Section Thirty-five, Township Nine, Range Seven, Hamilton County, Nebraska.

To LeRoy A. and Bertha M. Megrue the North Half of the Southwest Quarter, Section Thirty-five, Township Nine, Range Seven, Hamilton County, Nebraska.

To Christian and Clarence Engen, the West Half of the Southeast Quarter of Section Thirty-five, Township Nine, Range Seven, Hamilton County, Nebraska.

These deeds you are authorized and directed to deliver to the grantees therein named upon my death in any event, but not earlier except I shall hereafter desire it.

(Signed) Christian (his x mark) Knudson.

In presence of and witness to mark: Ambrose C. Epperson, Theo. Griess.

[fol. 82] EXHIBIT "C"—Def. Bank. G. B. H.

Know all men by these presents that Christian Knudson of the County of Clay and State of Nebraska, for and in consideration of a valuable consideration, consisting of care, attention and companionship in hand paid do hereby grant, bargain, sell, convey and confirm unto LeRoy A. Megrue and Bertha M. Megrue of the County of Hamilton and State of Nebraska, the following described real estate situated in Hamilton County and State of Nebraska, to wit: The North Half of the South West Quarter (N. ½ S. W. ¼), of Section Thirty-five (35), Township Nine (9), Range Seven (7), West of the Sixth P. M.

The grantor hereby reserves the use of said land during his lifetime.

To have and to hold the premises above described, together with all the tenements, hereditaments and appurtenances thereunto belonging unto the said LeRoy A. Megrue and Bertha M. Megrue, and to their heirs and assigns forever, and I do hereby covenant with the said grantees and with their heirs and assigns, that I am lawfully seized of said premises; that they are free from encumbrance; that I have good right and lawful authority to sell the same; and I do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said —— —— hereby relinquishes all ← in and to the above described premises.

Signed this 17th day of July, A. D. 1923.

(Signed) Christian (his x mark) Knudson.

In presence of and witnesses to mark: Ambrose C. Epperson, Theo. Griess.

STATE OF NEBRASKA,
Clay County, ss:

On this 17th day of July, A. D. 1923, before me, the undersigned H. G. Thomas, a Notary Public, duly commissioned and qualified for and residing in said County, personally came Christian Knudsen, to me known to be the identical person whose name is affixed to the foregoing instrument as grantor and acknowledged the same to be his voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

H. G. Thomas, Notary Public. (Seal.)

[fol. 83] EXHIBIT "D"—Def. Bank. G. B. H.

Know all men by these presents that Christian Engen of the County of Hamilton and State of Nebraska, for and in consideration of a valuable consideration, consisting of care, attention and compan-ship in hand paid, do hereby grant, bargain, sell, convey and confirm unto Robert E. Brown and Anna S. Brown, of the County of Clay and State of Nebraska, the following described real estate situated in Hamilton County, and State of Nebraska, to wit: The South Half of the Northwest Quarter (S. ½ N. W. ¼) of Section Thirty Five (35), Township Nine (9), Range Seven (7), West of the 6th P. M.

The grantor hereby reserves the use of said land during his lifetime.

To have and to hold the premises above described, together with all the tenements, Hereditaments and appurtenances thereunto belonging, unto the said Robert E. Brown and Anna S. Brown and to their heirs and assigns forever. And I do hereby covenant with the said Grantees and with their heirs and assigns, that I lawfully seized of said premises; that they are free from encumbrance, that I have good right and lawful authority to sell the same; and I do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever. And the said —— —— hereby relinquishes all — in and to the above described premises.

Signed this 17th day of July A. D. 1923.

(Signed) Christian (his X mark) Engen.

In presence of and witnesses to mark: Ambrose C. Epperson, Theo. Griess.

STATE OF NEBRASKA,
Clay County, ss:

On this 17th day of July, A. D. 1923, before me, the undersigned H. G. Thomas, a Notary Public, duly commis-

sioned and qualified for and residing in said county, personally came Christian Engen, to me known to be the identical person whose name is affixed to the foregoing instrument as grantor and acknowledged the same to be his voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

(Signed) H. G. Thomas, Notary Public. (Seal.)

[fol. 84] EXHIBIT

Sweden—Amity and Commerce

Treaty of Amity and Commerce Between the United States of America and the Kingdom of Sweden

Signed April 3, 1783. Ratified by the Continental Congress July 29, 1783. Proclaimed by Congress September 25, 1783.

(This treaty terminated by its own limtitation in 1796; the articles printed were revived by the Treaty of September 4, 1816, and by Article XVII of the Treaty of July 4, 1827.)

Translation

The King of Sweden, of the Goths and Vandals &c. &c. &c. and the thirteen United States of North America, towit, New Hampshire, Massachusetts bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the counties of New Castle, Kent, and Sussex on Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, desiring to establish in a stable and permanent manner, the rules which ought to be observed relative to the correspondence which the two parties have judged necessary to establish between their respective countries, states and subjects His Majesty and the United States have thought that they could not better accomplish that end than by taking for a basis of their arrangements the mutual interest and advantage of both nations thereby avoiding all those burdensome preferences, which are usually scources of debate, embarrassment and discontent, and by leaving each party at liberty to make re-

specting navigation & commerce, those interior regulations which shall be most convenient to itself.

With this view, his Majesty the King of Sweden has nominated and appointed for his plenipotentiary Count Gustavus Philip de Creutz, his ambassador extraordinary to His Most Christian Majesty, & Knight Commander of his orders; and the United States on their part have fully empowered Benjamin Franklin, their Minister plenipotentiary to his Most Christian Majesty.

The said plenipotentiaries after exchanging their full powers and after mature deliberation in consequence thereof have agreed upon, concluded and signed the following articles:

* * * * * * *

[fol. 85] Article 6 of Treaty

The subjects of the contracting parties in the respective States may freely dispose of their goods and effects, either by testament, donation or otherwise in favor of such persons as they think proper; and their heirs in whatever place they shall reside shall receive the succession even ab intestato either in person or by their Attorney without having occasion to take out letters of administration. These inheritances as well as the capitals and effects, which the subjects of the two parties in changing their dwelling, shall be desirous of removing from the place of their abode shall be exempted from all duty, called "droit de detraction" on the part of the government of the two states, respectively. But it is at the same time agreed that nothing contained in this Article shall in any manner derogate from the ordinances published in Sweden against emigrations or which may hereafter be published, which shall remain in full force and vigor. The United States on their part or any of them, shall be at liberty to make, respecting this matter, such laws as they think proper.

[fol. 86] Minute entry of argument and submission December 5, 1928, omitted in printing.

[fol. 87] IN SUPREME COURT OF NEBRASKA

No. 26236

KNUTE C. ENGEN, Appellee, Cross-appellee

v.

UNION STATE BANK, HARVARD, et al., Appellees, Cross-appellees; Van E. Peterson et al., Appellees, Cross-appellants; Impleaded with First Trust Co., Lincoln, Appellant, Cross-appellee

Appeal from the District Court of Hamilton County

JUDGMENT—Feb. 21, 1929

This cause coming on to be heard upon appeal from the district court of Hamilton county, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds error apparent in the record of the proceedings and judgment of said district court. It is, therefore, considered, ordered and adjudged that said judgment of the district court be, and hereby is, reversed and cause remanded with instructions to said district court to enter a decree dismissing the petition of plaintiff and the cross-petition of the defendant, Mari Tollefsen Todok, and adjudging each and all of the mortgages and conveyances in suit valid and enforceable; that appellant pay all costs in-[fols. 88 & 89] curred herein, taxed at $—, and have and recover of and from appellees its costs so expended; that appellees pay all costs incurred herein by them, taxed at $—; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Opinion by Eberly, J.

W. B. Rose, Acting Chief Justice.

[fol. 90] IN SUPREME COURT OF NEBRASKA

26236

ENGEN

v.

UNION STATE BANK OF HARVARD

OPINION—Filed February 21, 1929

1. The French words "fonds et biens," translated as "goods and effects," include realty, as they appear in the following terms of the existing treaty between the United States and Norway: "The subjects of the contracting parties in the respective states may freely dispose of their goods and effects, either by testament, donation, or otherwise, in favor of such persons as they think proper; and their heirs, in whatever place they shall reside, shall receive the succession even ab intestato, either in person or by their attorney." Erickson v. Carlson, 95 Neb. 182, approved and followed.

2. Treaty rights of aliens must be enforced by state courts without regard to conflicting statutory provisions.

3. The provisions of the homestead act (Comp. St. 1922, secs. 2816-2832), operating as restraints on alienation are, to that extent, repugnant to, and inconsistent with, the rights guaranteed by terms of this treaty stipulating that "the subjects of the contracting parties in the respective states may freely dispose of their goods and effects ("fonds et biens") either by testament, donation, or otherwise, in favor of such persons as they think proper."

4. As to conveyance of real estate authorized by such treaty, even though consisting of the dwelling house in which the grantor resides and its appurtenances, and the land on which it is situated, the restraints on alienation imposed by such homestead act are to that extent inoperative.

[fol. 91] Heard Before Goss, C. J.; Rose, Dean, Good, Thompson, and Eberly, JJ., and Redick, District Judge

EBERLY, J.:

This is primarily a suit to cancel deeds made by Christian Knudson in his lifetime conveying to his two nieces,

Anna S. Brown and Bertha M. Megrue and husbands, respectively, eighty-acre tracts in Hamilton county Nebraska. The pleadings embrace other issues, however, but the finding of the trial court was such as rendered the validity of the deeds, above referred to, the controlling question.

The undisputed facts in the record appear to be that Christian Knudson, a son of Norwegian subjects, was born in Norway, January 10, 1845, and married Mari Tollefsen Todok, also a subject of Norway, at a church wedding in that country; that thereafter they lived together in Norway until the spring of 1868. Knudson and his brother, Eric Engen, left their home in Norway May 16, 1868, and arrived in Wisconsin, June 22, 1868. Knudson came to Nebraska in 1878. His wife, Mari Tollefsen Todok, and his child remained at their home in Norway. The wife never came to the United States and at all times has continued a resident and subject of Norway. There is no evidence in the record that the naturalization of Christian Knudson as a citizen of the United States was ever completed. The plaintiff in this action, Knute C. Engen, the son of Christian Knudson and Mari Tollefsen Todok, left the Norway home and came to Nebraska in 1893, when he was 23 years old. He then worked for his father about one year on the father's place after his arrival and then permanently left his father's residence. The mother of Knudson was born June 16, 1818, and his father was born [fol. 92] February 3, 1819. His mother came to Nebraska in 1886 and the father in 1887 and joined Knudson who was then living on the 160 acres in controversy. Knudson took care of the old folks and supplied the provisions for them. Knudson's father died in this home January 31, 1900, being 81 years old; the mother died April 8, 1906, being 88 years old.

There is no evidence in the record that either the father or mother of Knudson was a naturalized citizen of the United States. On July 17, 1923, Christian Knudson in consideration of the care that his niece and her husband rendered to him, deeded the north half of the southwest quarter of section thirty-five, township nine, range seven, Hamilton county, to Bertha M. Megrue and Leroy A. Megrue. On October 2, 1923, the Megrues deeded this land to the Union State Bank of Harvard for a consideration of $9,600, and the Union State Bank conveyed in turn to Theo-

dore Griess, its president, who on September 22, 1924, borrowed from the First Trust Company of Lincoln $4,500, and executed a mortgage upon this land to secure the same to that organization. On July 17, 1923, Christian Knudson, in consideration of the care rendered by his niece and her husband also deeded the south half of the northwest quarter of section thirty-five, township nine, range seven, Hamilton county, to Anna S. Brown and Robert E. Brown. On September 17, 1923, the Browns deeded the premises thus received to the Union State Bank of Harvard for a consideration of $8,000. This bank in turn deeded to Theodore Griess, who borrowed from the First Trust Company of Lincoln $5,000, and executed a mortgage to secure the same on September 22, 1924, to such trust company.

[fol. 93] The district court by special findings determined, in addition to certain other facts, that Christian Knudson, sometimes known as Christian Engen, was at all times an alien and a subject of Norway, having never completed his naturalization in the United States, and that the defendant and cross-petitioner, Mari Tollefsen Todok, was his legal wife and was living in Norway at the time of his death; that Christian Knudson settled in Nebraska in 1878 and established a homestead which embraced the premises in controversy, and continued to reside upon said real estate as his homestead until his death, August 6, 1923; that the warranty deeds to the Megrues and the Browns referred to were each void and without force and effect for the sole reason that the lands purporting to be conveyed thereby were a part of the homestead of said Christian Knudson, and these deeds were not signed and acknowledged by his wife, the defendant, Mari Tollefsen Todok, and were therefore void. The court further determined that the conveyances made by the Megrues and Browns of the title thus received by them to the Union State Bank of Harvard were likewise null and void and of no force and effect for the sole reason that none of the grantors, due to the invalidity of the deeds as determined, had title to said real estate, and that the title thereof remained and continued to be vested in Christian Knudson, and that on August 6, 1923, when he died intestate leaving as his sole and only heirs at law his wife, the defendant, Mari Tollefsen Todok, and his son, the plaintiff, Knute C. Engen, the fee title to such real estate descended and vested in them, half and half,

share and share alike; and the court further found expressly that there was no fraud, conspiracy, or undue influence exercised by the defendants, or their agents, on said Christian [fol. 94] Knudson, as alleged in plaintiff's petition. The decree was entered accordingly. Van E. Peterson, receiver of the Union State Bank of Harvard, Nebraska State Bank of Harvard, and First Trust Company of Lincoln appeal.

A careful consideration of the evidence contained in the record inclines us to the belief, consistent with the findings of the trial court who heard the evidence and observed the witnesses who testified in person before him, that there was no fraud, conspiracy, or undue influence exercised by the defendants, or their agents, on Christian Knudson concerning, or in connection with, the conveyances of the premises involved in this litigation to the defendants Browns and the defendants Megrues. We further agree with the district court that the evidence sustains the conclusion that Knudson, the deceased, was at all times a subject of Norway and not a citizen of the United States.

"Foreigners by birth are presumed to be aliens. The status of a person as to alienage, when once established, is presumed to continue until the contrary is proved." 2 C. J. 1045, sec. 4; Hauenstein v. Lynham, 100 U. S. 483.

The mere fact of long residence in this country is insufficient to overcome this presumption. Ehrlich v. Weber, 114 Tenn. 711.

In addition, the evidence of the record before us, though somewhat meager on this point, tends to support the same conclusion. We have before us for determination, therefore, the question of rights wholly derived from a subject of Norway, and who was an alien both at the time of the [fol. 95] execution of the conveyances questioned and at the time of his death.

As to the situation thus presented, this court is committed to the view that the sixth article of the treaty of 1783 with Sweden incorporated by reference in the treaty of 1827 with Sweden and Norway, and which as to Norway still is in force, is controlling. The doctrine announced by this court in Erickson v. Carlson, 95 Neb. 182, is as follows:

"The French words 'fonds et biens,' translated as 'goods and effects,' include realty, as they appear in the following

terms of a treaty between the United States and Sweden: 'The subjects of the contracting parties in the respective states may freely dispose of their goods and effects, either by testament, donation, or otherwise, in favor of such persons as they think proper; and their heirs, in whatever place they shall reside, shall receive the succession even ab intestato, either in person or by their attorney.' " 8 U. S. St. at Large, p. 64, art. VI.

"Treaty rights of nonresident aliens must be enforced by state courts without regard to conflicting statutory provisions." Erickson v. Carlson, 95 Neb. 182; Butschkowski v. Brecks, 94 Neb. 532.

In other words, the accepted doctrine of the court is:

"Under section 2, art. VI, Constitution of the United States, 'all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; anything in the Constitution or laws of any state to the contrary, notwithstanding.'

[fol. 96] "State courts will take judicial notice of the existence of a treaty, and if its provisions are self-executing it is unnecessary to plead its existence." Butschkowski v. Brecks, 94 Neb. 532. See, also, Goos v. Brocks, 117 Neb. —.

To what extent, if any, is the claims of homestead in the property in controversy made on behalf of Mari Tollefsen Todok sustained and supported by the words quoted. These treaty provisions, referred to, date from 1783.

Homestead laws are strictly of American origin. The earliest statute of this kind was that enacted by the Republic of Texas, January 26, 1839. The first constitutional guaranty of homestead exemption was that of the Constitution of Texas in 1845. This was followed in turn by Vermont in 1849. All other states of the American Union adopted this policy at a date subsequent to 1849. In view of the history of the development and adoption of this public policy, it can hardly be inferred that the question of homestead rights were in contemplation of the makers of the treaty of 1783. True, the thirteen American states which then formed the Confederacy had each substantially adopted, for the benefit of the wife, the English doctrine of dower as defined at common law. Even so, it is, and

was, an established doctrine of the common law that "dower rights are cast upon the widow by operation of law, and it is well-settled common-law rule that an alien cannot cast any dower rights upon his wife, nor can an alien widow of a citizen take by dower any interest in her husband's lands." 2 C. J. 1066, sec. 32.

An examination of the terms of the treaty before us discloses no intention to extend the benefits of common-law [fol. 97] dower to the wife of the alien; in fact, no provision therein contained discloses any purpose to create or provide for her benefit any special rights or privileges whatever because of, or based upon, a martial relation sustained to an alien owner of property. On the contrary, this instrument expressly stipulates for conferring upon the "subjects of the contracting parties in the respective states" the unlimited, unrestricted, and unqualified right to "freely dispose of their goods and effects ("fonds et biens"), either by testament, donation, or otherwise (which necessarily includes the right to convey by deed), in favor of such persons as they think proper." This, in legal effect, is wholly inconsistent with the right of dower, and, in like manner, inconsistent with the existence of statutory right of homestead, in real estate to which the treaty applies.

For, if we consider the provisions of section 2819 and section 2832, Comp. St. 1922, as applicable to the subject of the present action, it necessarily follows that certain property within the purview of the treaty before us "cannot be conveyed * * * unless the instrument by which it is conveyed * * * is executed and acknowledged by both husband and wife;" and also that such property (homestead) "vests on the death of the person from whose property it was selected, in the survivor, for life, and afterwards in the decedent's heirs forever, subject to the power of the decedent to dispose of the same, except the life estate of the survivor, by will."

[fol. 98] The statutory provisions referred to thus assume the nature of limitations, qualifications, or modifications of the treaty itself, and, if valid, would necessarily change its true construction. Each of these provisions of the legislative enactment must therefore be considered to be pro tanto inconsistent with the terms of the controlling treaty properly construed. The conclusion follows that, to the ex-

tent inconsistent with the terms of the treaty, the statutory provisions are inoperative. The unquestioned rule of construction requires that the provisions of the treaty must be liberally construed and given full force and effect "anything in the Constitution or laws of any state to the contrary, notwithstanding." Therefore, the legal effect of the conveyances executed by Christian Knudson must be determined wholly by the powers conferred on him by treaty, and not by the inconsistent limitations and restrictions prescribed in the Nebraska homestead act. So considered, the validity of these conveyances cannot be questioned and they were each effective in vesting the titles to the lands described therein to the grantees therein named. These instruments being valid, it also follows that the subsequent deeds and mortgages affecting the titles, which were, in the district court, decreed to be void, are likewise valid and effective.

The judgment is therefore reversed and the cause remanded, with instructions to the district court to enter a decree dismissing the petition of plaintiff and the cross-petition of the defendant, Mari Tollefsen Todok, and adjudging each and all of the mortgages and conveyances in suit valid and enforceable.

Reversed.

[fol. 99] Petition and brief for rehearing, covering 24 pages, filed March 29, 1929, omitted from this print. It was denied and nothing more by order June 29, 1929.

[fol. 100] In Supreme Court of Nebraska

[Title omitted]

Order Denying Rehearing—June 29, 1929

This cause coming on to be heard upon motion of appellees Knute C. Engen and Mari Tollefsen Todok for a rehearing herin, was submitted to the court; upon due consideration whereof, the court finds no probable error in the judgment of this court heretofore entered herein. It is, therefore, ordered and adjudged that said motion for re-

hearing be, and hereby is, overruel and a rehearing herein denied.

Charles A. Goss, Chief Justice.

[fol. 101] IN SUPREME COURT OF NEBRASKA

[Title omitted]

AMENDED PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 21, 1929

To the Clerk of the Supreme Court of the State of Nebraska:

You will please prepare a record properly certified in the above entitled cause to be filed with an Application for Writ of Certiorari in the Supreme Court of the United States. Said certified record shall include the following:

1. Amended Petition, pages 27-51 inclusive.
2. Amendment to Amended Petition, pages 56 and 57.
3. Answer and Cross-Petition of First Trust Company, Lincoln, pages 60-67 inclusive.
4. Answer of other defendants, pages 68-72 inclusive.
5. Amended Reply of plaintiff, pages 75 to 78 inclusive.
6. Answer and Cross-petition of Mari Tollefsen Todok, pages 79 to 83 inclusive.
7. Reply to Answer of Mari Tollefsen Todok, page 85.
8. Answer to Cross-petition of Todok, pages 86 and 87.
9. Answer of First Trust Company, Lincoln, pages 90-92 inclusive.
10. Reply of Todok, pages 95 to 97 inclusive.
11. Journal Entry and Decree, pages 111 to 117 inclusive.
12. Opinion and judgment of the Supreme Court of Nebraska.

[fol. 102] 13. Motion for Rehearing by plaintiff.

14. Motion for Rehearing by Todok.

15. Journal Entry of the Supreme Court overruling Motion for Rehearing.

16. Testimony of Erick K. Engen, Questions and answers, 1124-1132; Questions and Answers 1137-1140; Questions and Answers 1142-1162; Questions and Answers 1164-1165; Questions and Answer 1168; Questions and Answers 1171-1178; Questions and Answers 1180-1222; Questions

and Answers 1235-1247; Questions and Answer 1354; Question and Answer 1356; Questions and Answers 2874-78; Questions and Answers 2881-2890; Questions and Answers 2893-2938.

17. Testimony of Mrs. Bertha Megrue: Questions and Answers 222-257; Questions and Answers 273-278; Questions and Answers 292-310; Questions and Answers 384-389; Questions and Answers 392-394; Questions and Answers 1358-1368.

18. Testimony of Leroy A. Megrue: Questions and Answers 563-583; Questions and Answers 590-602; Questions and Answers 625-628; Questions and Answers 1369-1375.

19. Exhibit "A" page 341.

20. Exhibit "C" page 344.

21. Exhibit "D" page 346.

22. Treaty of Amity & Commerce between the United States and Sweden, page 307 up to Article 1.

23. Article 6 of said Treaty, page 308.

24. Amended Præcipe.

Knute C. Engen and Mari To*ff*efson Todok, Petitioners, by H. G. Wellensick, F. E. Edgerton, Their Attorneys.

[fol. 103] Aurora, Nebraska, August 13, 1929.

The Defendants, Union State Bank of Harvard, Nebraska, a corporation, Robert E. Brown and Anna S. Brown, H. G. Thomas, Administrator of the Estate of Christian Knudson, deceased, Theodore Griess, Van E. Peterson, as Receiver of the Union State Bank of Harvard, Nebraska, State Bank of Harvard, Nebraska, and the First Trust Company of Lincoln, Nebraska, hereby acknowledge receipt and service of the foregoing prœcipe.

Butler & James, Hall, Cline & Williams, and J. H. Grosvenor, Attorneys for said Defendants, by J. H. Grosvenor.

[File endorsement omitted.]

[fol. 104] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 21, 1929

The petition herein for a writ of certiorari to the Supreme Court of the State of Nebraska is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(172)